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8 Attorneys for Defendants

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 **JOHN B. CUNDIFF and BARBARA C.**
12 **CUNDIFF, husband and wife; BECKY**
13 **NASH, a married woman dealing with her**
14 **separate property; KENNETH PAGE and**
15 **KATHRYN PAGE, as Trustee of the Kenneth**
16 **Page and Catherine Page Trust,**

17 **Plaintiffs,**

18 **v.**

19 **DONALD COX and CATHERINE COX,**
20 **husband and wife,**

21 **Defendants.**

Case No. CV 2003-0399

Division No. 1

**DEFENDANTS' STATEMENT OF
FACTS IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT RE:
DECLARATION VAGUENESS AND
AMBIGUITY**

*(Assigned to the Honorable David L.
Mackey)*

22 Pursuant to Rule 56, Ariz. R. Civ. P., Defendants Donald and Catherine Cox submit their
23 hereby submit their Separate Statement of Facts in Support of Defendants' Motion for Summary
24 Judgment Re: Declaration Vagueness and Ambiguity ("SSOF"):

25 1. Paragraph 2 of the Declaration of Restrictions that was recorded on June 13, 2004 in
26 the Official Records of Yavapai County, Arizona at Book 416, Page 680 ("**Declaration**") states:

27 No trade, business, profession or any other type of commercial or
28 industrial activity shall be initiated or maintained within said property
or any portion thereof.

1 See Exhibit "1" attached hereto.

2 2. The terms "trade", "business", and "profession", and the phrase "commercial or
3 industrial activity", are not defined in the Declaration. Id. at Exhibit "1".

4 3. The Declaration does not describe the types of activities that fall within the scope of
5 the terms "trade", "business", and "profession", and the phrase "commercial or industrial activity".
6 Id. at Exhibit "1".

7 4. Paragraph 2 of the Declaration also not prohibit agricultural activities. Id. at
8 Exhibit "1".

9 5. During their depositions, each Plaintiff provided a different interpretation of paragraph
10 2 of the Declaration; and each Plaintiff had their own perception of what activities and conduct on
11 property in Coyote Springs would and would not constitute a violation of paragraph 2 of the
12 Declaration. See Exhibit "2", deposition transcript of Plaintiff Kenneth Page, at 24:23-33:8, 36:10-
13 37:21, 41:4, 77:11-18, 78:5-20, 83:16-84:8; Exhibit "3", deposition transcript of Plaintiff Kathryn
14 Page, at 14:1-29:15, 95:2-23, 110:3-138:15, 168:5-173:18; Exhibit "4", deposition transcript of
15 Plaintiff John Cundiff, at 40:18-47:25, 77:19-79:24, 85:8-97:20, 102:10-108:24, 112:16-113:25,
16 123:1-124:16, 131:24-133:9, 135:22-141:21; Exhibit "5", deposition transcript of Plaintiff Elizabeth
17 Nash, at 32:21-40:15, 44:5-45:1, 57:10-61:3-72:14, 78:3-82:23.

18 6. Plaintiffs had substantial difficulty providing a definition of what constitutes a business
19 or commercial activity on the property burdened by the Declaration despite the fact that they each
20 have conducted their own businesses for, in some cases, several decades and some of which was in
21 the real estate industry. See Exhibit "2", deposition transcript of Plaintiff Kenneth Page, at 12: 11,
22 20: 16; Exhibit "3", deposition transcript of Plaintiff Kathryn Page, at 8:15-9:8; Exhibit "4",

1 deposition transcript of Plaintiff John Cundiff, at 8:21-30:22; Exhibit "5", deposition transcript of
2 Plaintiff Elizabeth Nash, at 48:20-25, 61:3-63:2.

3
4 7. Although Plaintiffs could not conclude whether various activities currently ongoing
5 in Coyote Springs fall within the scope of prohibited activities under paragraph 2 of the Declaration,
6 they were in agreement that Defendants tree farm constitutes a violation of paragraph 2 of the
7 Declaration. Plaintiffs drew an analogy to the standard for determining pornography, to wit: "I don't
8 know what it is but I know it when I see it." See references to deposition testimony cited above in
9 SSO, ¶ 5; see also, Exhibit "2", deposition transcript of Plaintiff Kenneth Page, at 38:3-44:8; Exhibit
10 "3", deposition transcript of Plaintiff Kathryn Page, at 20:4-22:3; Exhibit "4", deposition transcript
11 of Plaintiff John Cundiff, at 39:19-40:8; Exhibit "5", deposition transcript of Plaintiff Elizabeth Nash,
12 at 32:21-33:19.
13
14

15 8. Robert Conlin, the former owner of Coyote Springs and author of the Declaration,
16 in his Affidavit already submitted to this Court by Plaintiffs in connection with their Motions for
17 Summary Judgment, states that that the Declaration was not intended to preclude home-based
18 business offices and advertising the same to the public in Coyote Springs. See Exhibit "6", Affidavit
19 of Robert D. Conlin. A review of paragraph 2 of the Declaration reveals that it contains no such
20 exception. See Exhibit "1".
21

22 DATED this 24 day of June, 2005.

23
24 MUSGROVE, DRUTZ & KACK, P.C.

25 By

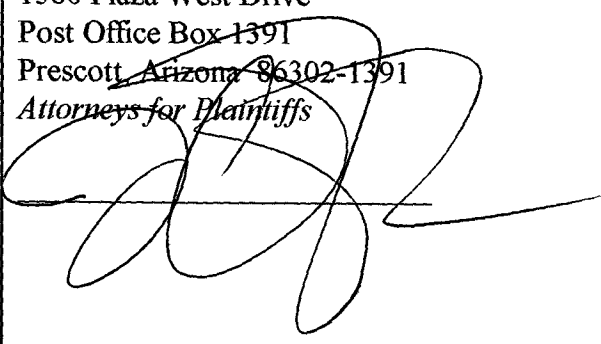
26 Mark W. Drutz
27 Jeffrey R. Adams
28 Sharon Sargent-Flack
Attorneys for Defendants

1 COPY of the foregoing hand-delivered
2 this 27 day of June, 2005 to:

3 Honorable David L. Mackey
4 Yavapai County Superior Court
5 Division 1
6 Yavapai County Courthouse
7 Prescott, Arizona 86301

7 COPY of the foregoing hand-delivered
8 this 24 day of June, 2005 to:

9 David K. Wilhelmsen, Esq.
10 Marguerite M. Kirk, Esq.
11 Favour, Moore & Wilhelmsen, P.A.
12 1580 Plaza West Drive
13 Post Office Box 1391
14 Prescott, Arizona 86302-1391
15 *Attorneys for Plaintiffs*



STATE OF ARIZONA, County of Yavapai 17 161

I do hereby certify that the within instrument was filed and recorded at the request of - Tom Lynch ...
June 13 A.D. 1974 at 1:35 o'clock P.M. Book 916. Official Records
Page 680-681-682 Records of Yavapai County, Arizona
WITNESS my hand and official seal the day and year first above written.

PAUL C. JENNEY, County Recorder
by Mary E. Hampton, Deputy

LUYUTE SPRINGS RANCH

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of all the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northwest quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.

2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.

3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.

4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.

5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.

6. All residential buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction.

7. (a) All single family residences other than mobile homes shall require 1,000 square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not to exceed three (3) weeks in any one season, or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

16. All garbage or trash containers, oil tanks, bottled gas tanks and other such facilities must be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

18. Invalidity of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect the validity of the remaining provisions.

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.


Robert D. Conlin


Margaret Dell Conlin


David A. Conlin, Jr.

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Dell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 3/1/77


Notary Public

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 3/1/77


Notary Public

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C.
CUNDIFF, husband and wife;
ELIZABETH NASH, a married woman
dealing with her separate
property; KENNETH PAGE and KATHRYN
PAGE, as Trustees of the Kenneth
Page and Catherine Page Trust,

Plaintiffs,

vs.

DONALD COX and CATHERINE COX,
husband and wife,

Defendants.

No. CV 2003 0399

DEPOSITION OF KENNETH PAGE

Prescott, Arizona
June 23, 2004
2:41 p.m.

REPORTED BY:
RENA F. LOTT, RPR
Certified Court Reporter
Certificate No. 50495

ORIGINAL

LOTT REPORTING, INC.

316 North Alarcon Street
Prescott, AZ 86301
928.776.1169

1 And another thing Mr. James shared with me,
2 you know, he said we won't be able to stop them. He said
3 they're -- they've got money. And he was completely
4 discouraged, because we don't have a homeowners
14:49:42 5 association. And he was. He was demoralized. And he
6 said, well, you know, we can't go up against them, with
7 limited finances. And so that got me just a little
8 concerned.

9 I'm not angry at these people. I'm not mad at
14:49:58 10 them. I don't hate them, but they're both -- They're
11 business people. I'm a business person. They knew what
12 the violations were and they blatantly went to the front
13 end and established a really big business. Plus right
14 across the street -- she talked to you -- What's the
14:50:17 15 guy? I forget the guy's name. He's on there. He was
16 observing them, and he said the same thing. He said, he
17 was real upset about the water, but he was also upset
18 about how many semi trucks. He had counted them.

19 But, you know what? He's just like a lot of
14:50:35 20 other people in Coyote Springs. He got scared off and
21 intimidated to get on the thing that they'd have to pay
22 some money to stop these blatant violations, you know.
23 So they are blatant violations.

24 Q. Let me ask you. Would it surprise you to
14:50:49 25 learn that the Coxes do live on the property, and they

1 THE WITNESS: I haven't heard of that, no.

2 Q. (Continued by MR. ADAMS) Okay.

3 A. I just get nervous, that's all.

4 Q. That's okay.

14:58:47 5 A. And that's natural.

6 Q. We all get that way.

7 A. That's just natural with me. School tests.

8 I'll just level with you. You never asked me. I got an

9 eighth grade education, and used to get upset when I had

14:59:04 10 to take a test. In fact, when I was in the Air Force,

11 they didn't make me take a written test. They gave me an

12 oral test. And I got promoted on my oral test.

13 You know, and another thing I got a general

14 manager, graduated me ASU in business. I got an in-house

14:59:21 15 CPA. And I use them all. So I'm not, I'm not the brains

16 behind Quality Bumper Company. I prayed with a pastor

17 in Glendale that I become a Christian businessman. And I

18 couldn't spell now or then. That's about it.

19 MS. KIRK: Okay.

14:59:48 20 Q. (Continued by MR. ADAMS) You think you're

21 position with respect to Mr. and Mrs. Cox would be

22 different if you didn't know what was going on on their

23 property?

24 MS. KIRK: Object as to form.

14:59:56 25 THE WITNESS: Could you reword that? Run

1 hundred rows of corn on their property and they took it
2 from their property and sold it either at the farmer's
3 market or Young's Farm or to the local grocery stores,
4 would you consider that to be a commercial use of their
15:02:49 5 property in Coyote Springs Ranch?

6 A. Well, you're allowed a certain -- you're
7 allowed two acres to put water on, right? I guess. But
8 I'm not sure how I feel about it.

9 Q. I'm just asking your opinion. Would you
15:03:11 10 consider that to be a business or commercial activity on
11 the property in Coyote Springs Ranch?

12 A. Hmmm.

13 MS. KIRK: Answer if you can.

14 THE WITNESS: Well, you mean he's going to
15:03:26 15 do it every year?

16 MR. ADAMS: Yes.

17 MS. KIRK: He's asking you if they do it
18 every year.

19 THE WITNESS: I, I assume it would be, if
15:03:37 20 he formed a partner and there was some commercial there,
21 I guess.

22 Q. (Continued by MR. ADAMS) Okay. Would you
23 have an objection to that, living in Coyote Springs
24 Ranch?

15:03:50 25 A. Well, he's allowed to water two acres, the way

1 I understand it there. So if he didn't have the whole
2 ten, he had some corn on two, I don't know exactly how it
3 would figure.

4 Q. Okay. Let me change my question. What if
15:04:05 5 they used eight of the ten acres to grow and harvest corn
6 and the other two acres is where they have their home and
7 they live there and they take that corn and go into
8 farmer's market?

9 A. That would be a violation.

10 Q. Okay. Would you have an objection to it?
15:04:20

11 A. Yeah, because it violates --

12 Q. If that condition existed in Coyote Springs
13 Ranch, would you sue that property owner to get them to
14 remove their corn growing and corn harvesting operation?

15 A. Well, you know, you've asked that question
15:04:35 16 several times about would we sue this, I'd sue this guy
17 and I'd sue that guy, you know. You're attorney at law,
18 and you know it takes a lot of money to take care of you
19 attorneys. And so, no, I don't know who I'd sue and who
15:04:54 20 I wouldn't, you know. You know, I just don't know. I'd
21 have to -- At the time I'd have to do the consideration,
22 you know.

23 Just to go be sue-happy about a guy with, you
24 know, with a sign out there that says he's in business,
15:05:12 25 and he trims a tree or something, you know, make a dollar

1 on the side, that's a little different from somebody.--
2 from me putting a Quality Bumper store out there.

3 And, in fact, a few years ago they were so
4 strict out there that Blanch Perkins was out there and
15:05:34 5 there was a guy, he had some heavy equipment on his
6 property, and he offered to work on that road if they
7 allowed him to leave the heavy equipment out there, and
8 they wouldn't let him. They run him out of there.

9 And I thought at the time, boy, that road sure
15:05:52 10 needs working on, you know, but they didn't do it. And I
11 wasn't as active then. It was Blanch Perkins and she's
12 gone on to her reward.

13 Q. How long have you operated Quality Bumper?

14 A. Since 1968.

15:06:19 15 Q. I assume in those years, since 1968, when you
16 first started you've had real good years and some not so
17 good years?

18 A. True.

19 Q. That's the nature of business, correct?

15:06:38 20 A. Sure is.

21 Q. And see if my math is any good. From 1968 to
22 now, that's 35 years?

23 A. Yes.

24 Q. In operating a business for 35 years, am I to
15:06:56 25 assume that you could provide me with a good definition

1 for what business is?

2 MS. KIRK: Object as to form.

3 THE WITNESS: Well, maybe.

4 Q. (Continued by MR. ADAMS) Okay. Why don't you
15:07:07 5 tell -- First of all, you heard me recite Webster's
6 Dictionary for --

7 A. I did.

8 Q. -- what it means to be in business?

9 A. Um-hum.

15:07:15 10 Q. Would you agree with what Webster's Dictionary
11 says?

12 A. Well, I assume the guy in Webster's Dictionary
13 knows more than I do.

14 Q. You've been in business a long time, Mr. Page.

15:07:30 15 A. 35 years, but to compete with -- I would say
16 35 years, to compete with Webster's Dictionary, no way.
17 And I just got through telling you, I got a formal
18 education of the eighth grade, so, you know, I feel like
19 that you're kind of harassing me. And I -- You know,
15:07:55 20 I'm just telling you the best I know, you know.

21 I started out with about eight hundred dollars
22 in money, mine, and my partners two -- working two jobs.
23 Okay? Rented an old farm garage. In fact, had the same
24 thing happen to me what's happening here. I rented a
15:08:14 25 farm garage, and I got a permit, commercial permit for

1 that farm garage on 75th Avenue, just south of Camelback,
2 in Phoenix, years ago, '68.

3 And I went down to the city and applied for a
4 license, and I got it. I said it was a garage. I forgot
15:08:36 5 to say it was a farm garage. City inspector come out,
6 and said what are you doing out here? I said, well,
7 we're building bumpers. Well, you can't do this. This
8 is a farming community. How did you get the license?
9 Well, I said, I went down there and they gave it to me,
15:08:54 10 and that's all I volunteered to him. But he run me out.
11 We weren't allowed to do that.

12 I went down to 1210 Grand Avenue and started
13 leasing -- my partner and I leased an old wrecking yard.
14 And eventually we took over the whole city block of that
15:09:11 15 wrecking yard and bought it. But we had to abide by the
16 laws then, you know. I had a -- I had a license, but
17 they come and kicked me off, so . . .

18 Q. Okay. Getting back to what my question now
19 was, how would you define a business?

15:09:31 20 A. Well, it's a -- I guess it's involved. You
21 know, there's several aspects of business. There's the
22 poor guy that's trying to do a little bit of work on the
23 side make a little bit of money, and your definition he's
24 in business. But he's just trying to make a -- he hasn't
15:09:54 25 got a big commercial operation there. And he's not --

1 Like you saw the picture a while ago with the
2 guy with the sign out there. And I forget. He had it on
3 wheels. He can roll that thing in the barn when he don't
4 want to work and to have a legitimate business is real
15:10:08 5 questionable. So he's making a little side money. I say
6 that's different.

7 At one time I thought about putting a
8 warehouse out there for Quality Bumper. My wife
9 stringently opposed me doing that, and I said there ain't
15:10:24 10 nothing wrong with that. I'm going to put some product
11 in here, and I can put it out somewhere else. She
12 wouldn't let me do it. She didn't want to do it. And as
13 I think it over, it wasn't a good idea, but, you know,
14 so --

15:10:39 15 Q. Let me ask you this: The guy who is doing
16 small jobs --

17 A. Yeah.

18 Q. -- in exchange for money, just purely based
19 upon the definition of what business is, is he engaging
15:10:52 20 in business?

21 A. Yes, he is.

22 Q. Okay. Then the guy who is putting a sign up
23 in front advertising what he is doing and then he does
24 it, is that engaging in business?

15:11:02 25 MS. KIRK: Object as to form.

1 THE WITNESS: A certain amount, you know.

2 Q. (Continued by MR. ADAMS) Okay.

3 A. A certain amount of business. He's limited in
4 his scope, when he's there.

15:11:14 5 Q. Right. But purposely, based upon what he is
6 doing, that falls within what you believe to be the
7 definition of what a business is, correct?

8 MS. KIRK: Object as to form.

9 THE WITNESS: Well, I got --

15:11:27 10 Q. (Continued by MR. ADAMS) Well, let me --

11 A. You know what? Sometimes I have a little
12 problem when you say a little handyman or a little
13 operation here and there is a, is a, really a business
14 that's planning to do anything. You know, I don't --
15:11:47 15 That's how I feel about it, so . . .

16 Q. Okay. Let's look at exhibit one. We're using
17 the same exhibits we used earlier today with your wife.
18 If you would please look at exhibit number one, and
19 specifically paragraph number two, is there any language
15:12:04 20 in that paragraph that provides that a small business
21 isn't covered?

22 A. No.

23 Q. So would you agree that that paragraph of the
24 Declaration of Restrictions identified as exhibit number
15:12:19 25 one applies equally to the guy doing the small business

1 type of work versus someone who is doing a large-scale
2 operation?

3 A. I assume it might be, yeah.

4 Q. Would you agree with that?

15:12:39 5 MS. KIRK: Object as to form.

6 THE WITNESS: Well, again, it gets back to
7 what I said, you know. If he's, he's doing a little bit
8 here and there on the side which don't amount to a hill
9 of beans, I'm not sure he do or not. To say the guy
10 parks his truck on the place, I might park my truck. I
11 don't -- I don't have a sign on my truck, but I drive it
12 out to my place, but I'm not running a business there,
13 and I don't know. I just --

14 Q. Someone repairing cars and having a garage to
15:13:11 15 repair cars on their property in Coyote Springs Ranch --

16 A. Um-hum.

17 Q. -- would that be a business?

18 A. Yeah, I would assume if he -- you know
19 according to --

15:13:21 20 Q. Okay. Let me ask you this: Regardless of the
21 size of the business operation being conducted on
22 properties out in Coyote Springs Ranch, regardless of
23 their size --

24 A. Yeah.

15:13:30 25 Q. -- should the Declaration of Restrictions be

1 applicable to all of them?

2 MS. KIRK: I'm going to object as to form.

3 THE WITNESS: Yeah, I assume so, yeah.

4 Q. (Continued by MR. ADAMS) Would that be fair?

15:13:40 5 A. Yeah. But you'd have a hard -- You know, if
6 you knew it was going on. You know, there's three
7 hundred property owners out there.

8 Q. Understood.

9 A. And they're everywhere.

15:13:51 10 Q. Don't you think it's fair if a restriction is
11 being applied to one property owner, the same
12 restrictions should be applied to the other property
13 owners?

14 A. Hmmm.

15:14:03 15 Q. Isn't that fair?

16 A. Well, it sounds fair in love and war. I don't
17 know. I think it's different if I go out there and put
18 in a big operation and some little guy is over here and
19 he is not hurting nobody, doesn't amount to a hill of
15:14:20 20 beans, and he's not changing the whole community for
21 putting in all kinds of commercial enterprises and
22 violating the CC & R's. And the fact that he's going to
23 make this a big operation and this is going to be a
24 really commercial area, which is residential.

15:14:36 25 The thing that's happening in that area,

1 there's people in there - yeah, they got older trailers
2 and everything - their property values is going up, and
3 that's going to become very expensive residential. You
4 can't --

15:14:47 5 I had a guy, the vice mayor of Prescott
6 Valley, tell me, when they put that fairgrounds out there
7 and they put all that out there, horse property is going
8 to be worth lots of money and that -- you know, one
9 dwelling per ten acres and they can put their horse
15:15:05 10 things out here, you know, raise their horses, just keep
11 their horses out here. There's nothing wrong. And
12 that's -- you know, just people like to ride horses and
13 things, but -- And the property is going up.

14 Q. Okay. Well, that really didn't address my
15:15:21 15 question, though.

16 A. Okay.

17 Q. The CC & R's, or I should say the Declaration
18 of Restrictions govern your property as well as everybody
19 else's property that is described in that legal
15:15:34 20 description set forth on the first page under the first
21 indented paragraph --

22 A. Yeah.

23 Q. -- on page one, correct?

24 A. Yes.

15:15:42 25 Q. Okay. And don't you think it's fair that that

1 document be applied to all of the properties equally out
2 there, regardless of whether they're small operations or
3 large operations going on?

4 MS. KIRK: Object as to form.

15:15:56 5 THE WITNESS: Yeah, it would be nice --

6 Q. (Continued by MR. ADAMS) Okay.

7 A. -- if it would.

8 Q. Would you agree that someone receiving money
9 to train horses is a business activity?

15:16:13 10 A. Yeah, I assume it probably is. Yeah.

11 Q. Okay. Would somebody boarding horses in
12 exchange for money be considered a business activity, in
13 your mind?

14 A. Hmmm, I would assume so.

15:16:25 15 Q. Okay. Would somebody breeding horses in
16 exchange for money be considered a business activity, in
17 your mind?

18 A. Well, yeah, I guess it could be, yeah.

19 Q. Okay. How about growing Christmas trees on
15:16:58 20 the property where people come in from the general public
21 to actually cut down the trees to use in their homes for
22 the Christmas season in exchange for money; would you
23 consider that to be a business activity?

24 A. Oh, I don't know of any such place existing,
15:17:15 25 but --

1 Q. If it did, would that be a business activity?

2 A. Well, I assume it would be, yeah.

3 Q. Okay. If there was already a property out in
4 Coyote Springs Ranch that had a greenhouse or a couple of
15:17:31 5 greenhouses on it in which flowers were grown and sold to
6 people from the general public, would that constitute a
7 business activity?

8 MS. KIRK: Object as to form.

9 THE WITNESS: Oh, I guess it could be.

15:17:43 10 Q. (Continued by MR. ADAMS) Okay. If a person
11 has animals that produce wool?

12 A. Sure.

13 Q. Produce wool and that wool was sold to members
14 of the general public, would that be considered a
15:18:01 15 business activity?

16 A. Well, I doubt if there's any such thing. I
17 don't know. You know, you mean shearing sheep or
18 something like that? I, you know -- I, I wouldn't -- I
19 wouldn't probably classify it. In my mind, I would have
15:18:18 20 it classified differently.

21 Q. Would selling wool, in your mind, be any
22 different than selling bumpers?

23 A. Good question. Well, I guess --

24 Q. Would it?

15:18:30 25 A. Well, this, like I say, this is an

1 agricultural area out here. And I'd have a hard time
2 with steel bumpers, selling them out here, but if I had a
3 sheep or whatever and I shear them, that might be a
4 little bit different.

15:18:46 5 Q. But is it a business activity, something done
6 to generate a sales transaction?

7 A. Well --

8 Q. Isn't that the essence of business?

9 A. Well, yeah. It's -- Yeah, your
15:18:57 10 interpretation of what it is, yeah.

11 Q. Okay. What about raising animals on the
12 property until they reach a certain age and then selling
13 them to someone else. Is that a business activity?

14 MS. KIRK: Object as to form.

15:19:14 15 THE WITNESS: Raising animals and
16 selling -- Hmmm, I guess it could be, yeah.

17 Q. (Continued by MR. ADAMS) Okay. And some
18 businesses don't involve the actual sale of goods, but
19 instead, they constitute the sale of services; would you
15:19:42 20 agree with that?

21 A. Yes, um-hum.

22 Q. Okay. And so if somebody has an office in
23 their residence on the property, and they perform a
24 personal service for somebody from the general public in
15:19:52 25 exchange for money, you would agree that that's a

1 business activity, correct?

2 MS. KIRK: Object to form.

3 THE WITNESS: Well, I don't know about

4 that. A formal -- If you're going to split hairs and

15:20:11 5 get nit-picky about things, I don't know. I feel there's

6 quite a bit of difference, again, if somebody working an

7 office and they're not -- they're not out there blatantly

8 with a sign and doing all this stuff, you know, making a

9 little extra bucks or whatever, and I still -- You and I

15:20:30 10 differ. What's your name?

11 Q. My name is Jeff.

12 A. Can I call you by your first name?

13 Q. You can call me anything you want.

14 A. You better be careful.

15:20:37 15 Q. I've been called everything, so it doesn't

16 matter to me.

17 A. Okay, Jeff. I think it's -- I differ a little

18 bit. I believe the Coxes and I run a different

19 operation, you know, I really do. Mine is grown. I

15:20:49 20 started out in a farm garage, and, you know, and now I

21 have about seven stores. Six. Six. I had to sell one.

22 But, nonetheless, yeah, I -- You know, we can split

23 hairs, if you want to, but I think a big, full-blown --

24 when a person knows, that they're going to, they can buy

15:21:10 25 this land, which is commercial land -- I mean, is

1 residential, and they're going to come in and buy that
2 land for a reduced price, because they're not supposed to
3 be there, and they know it. They went and talked to
4 neighbors. They not only told that -- I understand,
15:21:25 5 it's hearsay, but I got it from Don James' lips, and our
6 former attorney also said in my presence that he --

7 MS. KIRK: Wait, wait, wait.

8 THE WITNESS: Should I shut up?

9 (Whereupon, an off-the-record discussion
15:21:40 10 was had.)

11 THE WITNESS: Okay. I'm going to -- I'm
12 not going to go there.

13 Q. (Continued by MR. ADAMS) Just so you know,
14 Mr. Lauanders will be a witness in this case, because he
15:21:47 15 had provided my clients with legal advice.

16 A. Yeah, I understood that.

17 Q. If you want to tell me something he said, I
18 don't have a problem.

19 A. Sometimes I talk too much.

15:21:59 20 MS. KIRK: Can I just clarify.

21 Q. (Continued by MR. ADAMS) Let's go to --
22 Let's go to exhibit number one. Does exhibit number one
23 in paragraph two contain any language that puts any
24 parameters on either the scope, nature or breadth of the
15:22:18 25 type of activity that is considered business or

1 commercial that is allowed or not allowed?

2 A. No.

3 Q. So you would agree that paragraph number two
4 applies equally to the person conducting business inside
15:22:31 5 their residence, as the person who is doing something
6 that is a little more obvious from looking at the
7 property itself, correct?

8 MS. KIRK: Object as to form.

9 THE WITNESS: No. I, I don't see it that
15:22:43 10 way. I really don't. I've already -- You've --

11 Q. (Continued by MR. ADAMS) Then where is the
12 language in paragraph two of the Declaration of
13 Restrictions that allows someone to conduct a business
14 activity inside their residence constructed on their
15:22:57 15 Coyote Springs Ranch property?

16 A. There isn't. And, like I say, there's no
17 homeowners association to enforce this document, as it
18 should be --

19 Q. Okay.

15:23:08 20 A. -- or some of the things that you've said has
21 happened wouldn't have happened, you know? And I
22 basically agree with that document, you know, but it
23 ain't the way it is.

24 Q. But you would agree that this document, if
15:23:25 25 we're interpreting it literally according to its terms,

1 should be enforced against the person who is conducting a
2 home-based business and he does so to generate revenues,
3 correct?

4 A. Possibly.

15:23:37 5 Q. And that would apply to a person conducting an
6 auto repair shop on their property in Coyote Springs
7 Ranch, it would apply to someone conducting a horse
8 breeding business, it would apply to somebody farming
9 alpacas and llamas to use their wool to sell to people of
15:23:56 10 the general public, it would apply to a person training
11 horses, it would apply to the person selling automobile
12 parts, it would apply to the person doing accounting and
13 bookkeeping services; so it has broad application,
14 wouldn't you agree?

15:24:10 15 MS. KIRK: Object as to form.

16 THE WITNESS: Well, Jeff, I told you
17 several times, I don't quite see it completely that way.
18 When some guys are scraping out a little bit, ain't got a
19 big sign up there, and he's not, he's not blatantly --

15:24:26 20 Q. (Continued by MR. ADAMS) So you think exhibit
21 number one, which is the Declaration of Restrictions,
22 should be applied in a different way, depending upon how
23 large the operation is?

24 MS. KIRK: Object as to form.

15:24:36 25 Q. (Continued by MR. ADAMS) Is that an accurate

1 interpretation of what you're saying?

2 A. No. I don't know. That ain't what I want to
3 say. I just want to say that --

4 Q. You just disagree with how large the operation
15:24:47 5 is on the Coxes' property. Is that accurate?

6 A. I --

7 MS. KIRK: Which question do you want him
8 to answer?

9 THE WITNESS: What do you want me to
15:24:55 10 answer first?

11 MS. KIRK: You asked two.

12 MR. ADAMS: Read that question back, the
13 last one I just asked.

14 (Whereupon, the previous question was read
15:25:28 15 back by the court reporter.)

16 MS. KIRK: I'll object as to form.

17 THE WITNESS: I disagree on how large
18 their -- That's what you're saying. I want to qualify
19 that. That a yes or no answer? I feel like that once
15:25:42 20 somebody has been shared and they buy the property,
21 instead of going and buying a commercial property and
22 buy, you know, residential property, and then try to
23 convert that into a large wholesale operation, it's just
24 blatant, you know.

15:26:02 25 It's different from a -- I feel like it's a

1 little different from a, from a person who has got a --
2 is answering telephone in their house and they did some
3 paperwork or they drove their truck out to the place and
4 drove it back.

15:26:26 5 It's quite a bit of difference. That's a
6 whole ten acres out in that, we all got and so I --

7 Q. (Continued by MR. ADAMS) Okay. Let me ask
8 you this: Your wife and I had a discussion earlier today
9 concerning this group of people, or the group of people
10 that doesn't technically exist at this point?

11 A. Right.

12 Q. Okay. You were a participant in the meetings
13 that that group or nonexistent group has had up to this
14 point, correct?

15:26:54 15 A. Yeah. I've been a part in some discussions
16 with some of the neighbors.

17 Q. Okay.

18 A. That's how I got involved was talking.

19 Q. Okay. Those discussions, did they involve
15:27:09 20 efforts to enforce the Declaration of Restrictions
21 against any other property owner, other than Mr. and Mrs.
22 Cox?

23 A. No, not at this time it wasn't.

24 Q. You weren't a party to any of the sales
15:27:44 25 transactions pursuant to which Mr. and Mrs. Cox purchased

1 their property, were you?

2 A. No, no.

3 Q. You weren't present when they signed documents
4 in connection with that transaction --

5:27:57 5 A. No.

6 Q. -- correct?

7 A. No.

8 Q. You didn't participate in their inspection of
9 that property before they bought it, correct?

5:28:08 10 A. I've already testified I didn't even know the
11 Coxes, so I couldn't very well have done that.

12 Q. You don't know what they actually knew when
13 they bought their property in 1998, correct?

14 A. All I have is what I told you, Mr. James --

5:28:18 15 Q. Okay.

16 A. -- has said.

17 Q. If Mr. James wasn't around when they actually
18 bought their property, then wouldn't you agree that he
19 wouldn't have any knowledge or insight into what they
5:28:30 20 knew when they bought it?

21 MS. KIRK: Object as to form.

22 THE WITNESS: I guess if he got these
23 documents and they read them.

24 Q. (Continued by MR. ADAMS) What if they didn't
5:28:38 25 get the documents --

1 MS. KIRK: Object.

2 Q. (Continued by MR. ADAMS) -- when they bought
3 the property?

4 MS. KIRK: Object as to form.

5 THE WITNESS: Well, the only thing, we
6 know that's residential. You'd have to be blind as a bat
7 not to know it's residential. And the Coxes didn't buy
8 that for residential. They bought it to further their
9 nursery.

10 Q. (Continued by MR. ADAMS) Have they told you
11 that?

12 A. It's quite apparent.

13 Q. Have they told you that, Mr. --

14 A. No, they haven't told me, but it's quite
15 apparent. You'd have to be blind as a bat.

16 Q. You haven't had any direct conversations with
17 Mr. or Mrs. Cox, so you don't know what was in their
18 mind, do you?

19 A. No.

20 Q. You don't know what was in their mind when
21 they bought --

22 A. No.

23 Q. -- the property at Coyote Springs Ranch,
24 correct?

25 A. I don't.

1 Q. So you're purely speculating on that basis,
2 aren't you?

3 MS. KIRK: Because you're asking him to --
4 Object as to form.

5 THE WITNESS: I almost object as to form,
6 too. But, anyhow, no. You know, I don't know what they
7 did earlier. I do feel like that we all know that that's
8 residential, and --

9 Q. (Continued by MR. ADAMS) Okay. Now, let's go
10 back to that.

11 A. Okay.

12 Q. In 1998 when they were going out to inspect
13 their property, would you agree that a number of the
14 properties out there have pretty large stables and horse
15 training, boarding breeding operations?

16 MS. KIRK: Object as to form.

17 THE WITNESS: No, I wouldn't say that.

18 MS. KIRK: And foundation.

19 THE WITNESS: No, I don't think.

20 Q. (Continued by MR. ADAMS) Okay. In fact,
21 doesn't the very first property that you pass on Coyote
22 Springs Road have ten to fifteen stables on it for horse
23 boarding and training?

24 MS. KIRK: Object as to form.

25 THE WITNESS: First one I pass --

1 MS. KIRK: I'm not testifying, but you're
2 really starting to badger him.

3 THE WITNESS: Jeff, I run a business. I'm
4 kind of semiretired. I got a lot of activities going on,
16:14:08 5 and I can't remember every incident and when this
6 happened and when that happened. I'm lucky to tell you
7 when I built my house. And your firm represented me
8 against my contractor, you know, and represented -- your
9 firm represented three or four more guys. But I just
16:14:30 10 lost track of time. I'm not exactly sure. I know the
11 conversation took place. And I -- from Mr. James' prior,
12 put me in a spot, I just feel like I don't think he's a
13 liar. That's all.

14 Q. (Continued by MR. ADAMS) But Mr. James isn't
16:14:44 15 a party to this lawsuit, is he?

16 A. Because he's scared off because of finances.

17 Q. Okay. But Mr. James isn't a party to the
18 lawsuit, yet you're the one who relied upon him, and your
19 conversation with him is what precipitated your
16:14:58 20 involvement in the lawsuit, correct?

21 MS. KIRK: Objection as to form and
22 foundation.

23 THE WITNESS: It could have influenced me.
24 It wasn't the sole reason.

16:15:08 25 Q. (Continued by MR. ADAMS) Your conversation

1 Q. (Continued by MR. ADAMS) Would you agree that
2 that's a business activity?

3 MS. KIRK: Objection as to form.

4 THE WITNESS: To have that many cows,
16:28:57 5 you'd sure be doing something. You'd have to have a lot
6 of water.

7 Q. (Continued by MR. ADAMS) My question is,
8 though, would you agree that that's a business activity?

9 MS. KIRK: Objection as to form.

16:29:06 10 THE WITNESS: Restate it to me, please.

11 Q. (Continued by MR. ADAMS) Okay. Would you
12 agree that having forty head of cattle on property in
13 Coyote Springs Ranch for purposes of sale, breeding or
14 slaughter, in exchange for money, would be a business
16:29:21 15 activity?

16 MS. KIRK: Objection as to form.

17 THE WITNESS: It possibly would, but I
18 don't know of any such operation.

19 Q. (Continued by MR. ADAMS) Would using Coyote
16:29:31 20 Springs Ranch property as a storage yard for construction
21 vehicles, with construction materials for use as a
22 construction company, be considered a business activity?

23 A. Storing -- Are you talking, Jeff, about
24 somebody drove his vehicle home and it sits there, or are
16:29:55 25 you exaggerating that?

1 Q. No. I'm just asking the question. If you
2 want me to repeat the question, I will gladly.

3 A. Well, it's a question I don't know exactly how
4 to answer, to be frank with you. You know, I just --

16:30:09 5 Q. (Continued by MR. ADAMS) Would using Coyote
6 Springs Ranch property for purposes of storing work
7 vehicles and work trucks and construction equipment along
8 with construction supplies, including wood, and trusses,
9 and nails and things of that nature, for purposes of
16:30:31 10 doing construction, be considered a business activity on
11 that property?

12 MS. KIRK: Object as to form.

13 THE WITNESS: I can imagine it probably
14 would be. But I don't know of such a place.

16:31:01 15 Q. (Continued by MR. ADAMS) Would using Coyote
16 Springs Ranch property for purposes of operating a group
17 home for handicapped children in exchange for money be
18 considered a business activity?

19 MS. KIRK: Object as to form.

16:31:16 20 THE WITNESS: I imagine it could be.

21 Q. (Continued by MR. ADAMS) Do you know where
22 Spurr Lane is?

23 A. I see it when I drive on Coyote Springs Road,
24 but much more than that, I don't know about it.

16:32:09 25 (Deposition exhibit thirteen marked.)

1 A. I don't remember, but I don't think so.

2 Q. So my clients' property is the only one where
3 you've seen a semi-truck going in and out of; is that
4 what your testimony is today?

16:36:35 5 A. My testimony -- If you'll remember, I didn't
6 say that. I said that the neighbor across the street
7 told me that there was any number of semi-trucks going in
8 and out, because I'm not up at the front and all that,
9 and I can't remember the man's name. Bob, I'm not sure.
16:36:56 10 But the guy right across the street has got the fruit
11 trees. He, for a while, was keeping a record, and he
12 said there was a whole lot of them. I'm just quoting
13 what he said. I didn't see them myself. Just all the
14 neighbors what they've seen.

16:38:51 15 (Deposition exhibit fourteen marked.)

16 Q. (Continued by MR. ADAMS) I've handed you
17 what's been marked as exhibit number fourteen. Have you
18 ever driven by that property?

19 A. Where is it at?

16:39:16 20 Q. You don't recognize the red building as
21 being --

22 A. Yeah, I've seen the red. Yeah, now, it's off
23 to the left, north of Coyote Springs Road.

24 Q. Okay. And that's located in the portion of
16:39:29 25 Coyote Springs Ranch --

1 A. I think it's --

2 Q. -- that you live, correct?

3 A. Yeah, I assume. I've seen it.

4 Q. If the people that own this farm sell the
16:39:36 5 trees that are depicted on their property for money,
6 would you agree that that is a commercial activity?

7 A. Yeah, if you're selling them for money and
8 they're raising them for that, yeah.

9 Q. Okay. And you haven't brought an action
16:39:49 10 against them, have you?

11 A. No.

12 MR. ADAMS: Okay. I have no further
13 questions.

14 MS. KIRK: We'll read and sign.
16:40:02 15 Full-sized copy.

16 MR. ADAMS: Condensed and full version,
17 e-mailed.

18 ---o0o---

19

20 (WHEREUPON, the proceedings were concluded
21 at the approximate hour of 4:40 p.m.)

22

23

24

25

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C.
CUNDIFF, husband and wife;
ELIZABETH NASH, a married woman
dealing with her separate
property; KENNETH PAGE and
KATHERYN PAGE, as Trustees of
the Kenneth Page and Katheryn
Page Trust,

Plaintiffs,

vs.

DONALD COX and CATHERINE COX,
husband and wife,

Defendants.

No. CV 2003 0399

DEPOSITION OF KATHERYN PAGE

Prescott, Arizona
June 23, 2004
9:36 a.m.

REPORTED BY:
RENA F. LOTT, RPR
Certified Court Reporter
Certificate No. 50495

ORIGINAL

LOTT REPORTING, INC.

316 North Alarcon Street
Prescott, AZ 86301
928.776.1169

1 Q. What's your educational background?

2 A. I have a high school education, and I went on
3 to vocational school twice.

4 Q. Did you work in a profession after you
09:40:39 5 finished your education?

6 A. Yes, I was a beautician for a while and then I
7 went into nursing and graduated from nursing school.

8 Q. How long were you a nurse? Are you still a
9 nurse?

09:40:50 10 A. Yeah, I still hold my license, but I don't
11 work.

12 Q. So you're not employed at all at this time?
13 You're retired?

14 A. No, just at home.

09:40:53 15 Q. Do you do anything out of the home that you
16 generate income from?

17 A. I work for my husband, Quality Bumper Company,
18 and I go there once a week for a meeting. So that's all.

19 Q. Okay. And any of those activities that are
09:41:12 20 related to Quality Bumper, do any of them occur at your
21 home in Coyote Springs?

22 A. No, no.

23 Q. Does any mail that deals with Quality Bumper
24 ever get delivered to your residence in Coyote Springs
09:41:26 25 Ranch?

1 A. No.

2 Q. How long have you operated, or you and your
3 husband, operated Quality Bumper?

4 MS. KIRK: Objection. Form.

09:41:39 5 Q. (Continued by MR. ADAMS) You can still
6 answer the question.

7 A. Okay. My husband has been in business since
8 1968.

9 Q. Occasionally today your attorney will object
09:41:51 10 to my questions, and she's doing that for purposes of
11 preserving the record.

12 A. Okay.

13 Q. But unless she instructs you not to answer a
14 question, after she asserts her objection and the court
09:42:05 15 reporter has made the record that the objection is made,
16 you are permitted to go ahead and answer the question.

17 A. Okay.

18 MR. ADAMS: Is that fair, Counsel?

19 MS. KIRK: Um-hum.

09:42:14 20 MR. ADAMS: Okay.

21 Q. (Continued by MR. ADAMS) Where is the
22 business location for Quality Bumper?

23 A. 1210 Grand Avenue in Phoenix.

24 Q. Is there any business location for that here
09:42:28 25 in Arizona -- in Yavapai County?

1 Q. (Continued by MR. ADAMS) Okay. How would you
2 define a business?

3 A. Well, I suppose you would have to have a
4 business license, which I've never seen theirs, but,
09:47:17 5 obviously, that's why we're here. Conducting business.
6 Conducting your business. I don't know. What is a
7 business? I don't know. I -- We have one. It's
8 conducting business transactions and, you know -- I
9 don't know. I don't know how to explain it, but it -- A
09:47:50 10 business is making a living. It's you're making a living
11 on what you do, living off of what you do.

12 Q. Would you consider the United Way to be a
13 business?

14 A. No. It's a nonprofit organization, isn't it?

09:48:08 15 Q. Okay. Would a nonprofit corporation be a
16 business?

17 A. I don't know about corporations.

18 Q. Do you consider the Salvation Army to be a
19 business?

09:48:17 20 A. I'm not sure. I'm not sure if they are.
21 It's -- I --

22 Q. I'm asking your opinion here.

23 A. My opinion is that, no, they're a nonprofit
24 organization.

09:48:27 25 Q. Would you agree that a business involves

1 providing goods or services to others in exchange for
2 consideration?

3 A. If they're selling something. I would imagine
4 that it is.

09:48:38 5 Q. Okay.

6 A. And I know Salvation Army has their little
7 Good Will places that they sell things.

8 Q. Okay.

9 A. But I'm not sure as far as their business
09:48:47 10 status. I don't know what kind of license they have. I
11 don't know.

12 Q. I'm just trying to get a general definition
13 for a business here. Would you agree that a business
14 would include a situation where goods or services are
09:48:59 15 being provided?

16 A. It could be, yes.

17 Q. Okay.

18 A. It could be.

19 Q. So charitable organizations, by that
09:49:09 20 definition would be businesses, correct?

21 MS. KIRK: Objection.

22 THE WITNESS: I don't know if that's
23 correct.

24 Q. (Continued by MR. ADAMS) Would you agree with
09:49:15 25 that or not?

1 MS. KIRK: Objection.

2 THE WITNESS: I don't know. I'm not a
3 business -- I don't have a business mind. I'm not privy
4 of business matters, even though we own one. It's been
09:49:27 5 his business, and I'm not involved in the details of
6 corporations and business and stuff. I'm not -- It's
7 not my cup of tea.

8 Q. (Continued by MR. ADAMS) Is your Quality
9 Bumper a corporation?

09:49:36 10 A. Yes, I think.

11 Q. What did you do to become a corporation?

12 A. I don't know. I didn't do it.

13 Q. What does your business do?

14 A. It sells bumpers and hitches, and we retail
09:49:52 15 and install all kinds of truck accessories, and that --

16 Q. Why do you do that?

17 MS. KIRK: Objection.

18 THE WITNESS: Why does anybody do what
19 they do for a living? That's what his business is. I
09:50:06 20 don't do it. The business does.

21 Q. (Continued by MR. ADAMS) Are you a member of
22 the corporate entity that exists with respect to Quality
23 Bumper?

24 A. Yes, I am.

09:50:14 25 Q. Okay.

1 A. Very minor part.

2 Q. Okay. But you are a stockholder or
3 shareholder in the corporation that exists?

4 MS. KIRK: If you know.

09:50:23 5 THE WITNESS: I think I am.

6 Q. (Continued by MR. ADAMS) Okay.

7 A. I don't get into that. I'm telling you.

8 Q. And you don't provide the services or products
9 that you provide to people for free, do you?

09:50:38 10 A. Of course not. It's his business.

11 Q. You do it in exchange for money, correct?

12 A. Of course. We have stores.

13 Q. Okay. And you sell things out of your stores,
14 correct?

09:50:48 15 A. Yes.

16 Q. And some money exchanges --

17 A. Yes.

18 Q. -- leaves one hand and comes to yours,
19 correct?

09:50:56 20 A. That's right.

21 Q. And the products that you have in your store
22 leave the store and go to the people that buy them,
23 correct?

24 A. Yes.

09:51:01 25 Q. So you, then, would agree that a business

1 includes the exchange of goods or services for money,
2 correct?

3 A. It could be, yeah.

4 Q. You would agree with that?

09:51:14 5 A. Ours does.

6 MS. KIRK: Objection.

7 Q. (Continued by MR. ADAMS) But would you agree
8 with that general premise?

9 MS. KIRK: Objection.

09:51:17 10 THE WITNESS: I don't know about all
11 businesses. I don't know.

12 Q. (Continued by MR. ADAMS) But would you agree
13 that a business would include some --

14 THE WITNESS: Some businesses do.

09:51:28 15 MS. KIRK: Objection.

16 THE WITNESS: Some businesses do, yes, but
17 I don't know about all businesses.

18 MS. KIRK: Okay. Now is a good time for a
19 break. I want to speak with my client. Thank you.

09:52:17 20 (Whereupon, a recess was had.)

21 Q. (Continued by MR. ADAMS) Before your attorney
22 asked for a break, actually took a break, we were talking
23 about what a business is.

24 A. Right.

09:56:39 25 Q. Okay. How would you define what a business

1 is?

2 A. Didn't I already answer that?

3 MS. KIRK: Objection.

4 Q. (Continued by MR. ADAMS) You can answer it.

09:56:50 5 A. I already answered that.

6 Q. I'm asking again. Please tell me what you
7 think a business is, because you've left some doubt in my
8 mind.

9 A. Okay. A business is what one does in order to
09:57:06 10 make a living.

11 Q. Is it limited to that?

12 MS. KIRK: Objection.

13 THE WITNESS: Maybe not.

14 Q. (Continued by MR. ADAMS) In order to be a
09:57:24 15 business, does it require that money exchange hands?

16 A. I don't know.

17 Q. What does it mean to make a living?

18 A. To work and receive an income.

19 Q. So if somebody doesn't need an income, and
09:57:49 20 they engage in transactions with other people in exchange
21 for money, would that be a business?

22 MS. KIRK: Objection.

23 THE WITNESS: I don't know.

24 Q. (Continued by MR. ADAMS) Okay. Well, you
09:57:59 25 asserted that my clients are conducting a business on the

1 property in Coyote Springs Ranch, so I assume that you
2 then know what a business is.

3 MS. KIRK: Objection.

4 Q. (Continued by MR. ADAMS) So I would like to
09:58:16 5 know what you're relying upon to conclude that my clients
6 are running a business.

7 A. Prescott Valley Nursery is a business.

8 Q. Okay. Where is Prescott Valley Nursery
9 located?

09:58:25 10 A. Well, right now it's located in Coyote
11 Springs, and it's also located near Viewpoint there and
12 on 69.

13 Q. Okay. What information do you have that
14 business is actually taking place at the property in
09:58:43 15 Coyote Springs Ranch?

16 A. Well, I can see -- I can see activity there
17 that constitutes a business.

18 Q. Okay. Tell me what activity that is there
19 that constitutes activity, because if you're saying that
09:59:00 20 a business is limited to doing something to make a
21 living; what activity is actually occurring on my
22 client's property in Coyote Springs Ranch that
23 constitutes a business?

24 MS. KIRK: Objection.

09:59:10 25 THE WITNESS: They're growing trees there,

1 thousands of trees to sell.

2 Q. (Continued by MR. ADAMS) Okay. How many
3 transactions have you seen occur on the Coyote Springs
4 Ranch property?

09:59:22 5 A. I have not.

6 MS. KIRK: Objection.

7 THE WITNESS: I haven't seen, myself, any,
8 but I have seen trucks going in and out.

9 Q. (Continued by MR. ADAMS) Okay. How many
09:59:33 10 transactions that have occurred at Coyote Springs Ranch
11 property that my clients own do you know about?

12 MS. KIRK: Objection.

13 THE WITNESS: I don't know about any
14 transactions.

09:59:42 15 Q. (Continued by MR. ADAMS) Okay. You don't
16 know -- You don't have any firsthand knowledge that any
17 commerce occurs at the Coyote Springs Ranch property, do
18 you?

19 MS. KIRK: Objection.

09:59:55 20 THE WITNESS: I know -- Well, okay.

21 Let's put it this way: They have an unusually large
22 water tank and well and pump in that, in that tank out
23 there. That is not only for a home. That is a
24 commercial whatever you call it there. And they have had
10:00:32 25 illegals. I am assuming illegals. I don't know. But

1 they've had Mexicans that live there that took care of
2 the trees. They had a jay-john sat out there. And they
3 had semi-trucks going in and out at one time.

4 Q. (Continued by MR. ADAMS) What property owners
10:00:50 5 that live at Coyote Springs Ranch did you make the
6 comment that you're not going after them, you're only
7 going after the Coxes?

8 MS. KIRK: Objection.

9 THE WITNESS: I did not make that comment.

10:00:59 10 Q. (Continued by MR. ADAMS) You never made any
11 statement of that nature to any other property owner in
12 Coyote Springs Ranch?

13 THE WITNESS: I certainly have not

14 MS. KIRK: Objection.

10:01:06 15 THE WITNESS: I don't even know the Coxes.

16 Q. (Continued by MR. ADAMS) Regarding this
17 lawsuit, how many property owners in Coyote Springs Ranch
18 have you spoken to?

19 A. I'm not sure the amount of people that we have
10:01:19 20 talked to, but we've had meetings.

21 Q. Who is it in -- Strike that.

22 Have you ever submitted anything to the
23 newsletter that circulates out there regarding this
24 lawsuit?

10:01:35 25 MS. KIRK: Objection.

1 THE WITNESS: I called -- I forgot the
2 lady's name -- the printers. She had called me. I think
3 this is the way it was. She had called me and asked me
4 what was going on and to let her know when the meetings
10:01:53 5 were and that she would publish them. So I called her
6 one time and asked her to put a notice in the paper about
7 the meeting that was to do with businesses in Coyote
8 Springs and that meeting. So that's the only time I
9 talked to her.

10:02:16 10 Q. (Continued by MR. ADAMS) You just used the
11 phrase businesses. Is that intended to mean more than
12 just what you believe to be is occurring on my client's
13 property?

14 A. It was if there was any besides them. I don't
10:02:28 15 know of any. I did not know of any. There is the first
16 one that came up, and that's -- that was the intention of
17 the meeting, for the group to get together and decide
18 what we were going to do about this.

19 Q. Would you consider somebody boarding horses on
10:02:50 20 property in Coyote Springs Ranch in exchange for money to
21 be a business?

22 MS. KIRK: Objection.

23 THE WITNESS: Not necessarily.

24 Q. (Continued by MR. ADAMS) Would you consider
10:03:01 25 somebody training horses in exchange for money in Coyote

1 Springs Ranch to be a business?

2 MS. KIRK: Objection.

3 THE WITNESS: Not necessarily.

4 Q. (Continued by MR. ADAMS) Would you consider
10:03:09 5 somebody boarding horses to make a living in Coyote
6 Springs Ranch to be a business?

7 MS. KIRK: Objection. Asked and answered.

8 THE WITNESS: Pardon me?

9 MR. ADAMS: My question was different,
10:03:24 10 actually. The second question dealt with making a
11 living, which is what she includes as parts of her
12 definition for a business.

13 THE WITNESS: Possibly.

14 Q. (Continued by MR. ADAMS) And would you agree
10:03:31 15 that training horses in Coyote Springs Ranch to make a
16 living is a business?

17 MS. KIRK: Objection.

18 THE WITNESS: It could be.

19 Q. (Continued by MR. ADAMS) How could it be?

10:03:41 20 A. If that was their sole means of support and
21 they were -- if they were using it as a major business, I
22 suppose so.

23 Q. What would you consider a major business?

24 A. Something that obviously looked like a
10:04:00 25 business.

1 Q. So if something doesn't look like a business,
2 then, in your view, it's not?

3 A. I don't know. How would I know if it didn't
4 look like one? I don't --

10:04:11 5 Q. If somebody is boarding horses in exchange for
6 money, you don't think that's a business?

7 A. Not necessarily.

8 Q. Why not?

9 A. I don't know what their business is. I could
10:04:30 10 do a favor for somebody and take money for it and it not
11 be my business.

12 Q. Would you agree that if somebody is selling
13 some sort of good to somebody else, in exchange for
14 money, that that is a business?

10:04:58 15 MS. KIRK: Objection.

16 THE WITNESS: It could be.

17 Q. (Continued by MR. ADAMS) How could it be?

18 A. If they consider it their business.

19 Q. Okay. So the definition of whether it's a
10:05:10 20 business or not is left up to the person who is doing the
21 activity?

22 MS. KIRK: Objection.

23 THE WITNESS: To a certain point.

24 Q. (Continued by MR. ADAMS) To what point?

10:05:17 25 A. To what point that they have a business

1 license and are conducting business.

2 Q. Okay. So if somebody has a business license,
3 then you would agree that that person is conducting
4 business, correct?

10:05:32 5 A. I would think so.

6 Q. So if somebody lives in Coyote Springs and
7 owns property in Coyote Springs and they have a business
8 license and that business license is issued based upon
9 the address in Coyote Springs Ranch, then they would be
10 conducting business in Coyote Springs Ranch, correct?

11 A. I would think so.

12 Q. And that would be the same whether a person is
13 doing something that is open and obvious to the public or
14 within the confines of the structures that are there that
15 you can't see from the outside, correct?

16 A. Yes.

17 Q. So by way of example, if someone were in their
18 home in Coyote Springs Ranch, they do accounting and
19 bookkeeping in exchange for money, they have a business
20 license to do that --

21 A. Um-hum.

22 Q. -- you would agree that that constitutes a
23 business activity, correct?

24 A. Yes.

10:06:22 25 Q. And you would agree that that constitutes a

1 business activity within the scope of the Declaration of
2 Restrictions that governs the property that you own,
3 correct?

4 MS. KIRK: Objection.

10:06:33 5 THE WITNESS: Yes.

6 Q. (Continued by MR. ADAMS) So if someone in
7 Coyote Springs Ranch has a business license and, under
8 the umbrella of that business license, they train horses
9 in exchange for money, they would then be conducting a
10:06:54 10 business, correct?

11 MS. KIRK: Objection.

12 THE WITNESS: Yes.

13 Q. (Continued by MR. ADAMS) And if I had the
14 same facts that applied to someone training horses, would
10:07:04 15 you agree that that would be a business within the scope
16 of the CC & R's that govern the property in Coyote
17 Springs Ranch?

18 MS. KIRK: Objection.

19 THE WITNESS: Yes, I suppose so.

10:07:13 20 Q. (Continued by MR. ADAMS) And if someone is
21 selling hay, they have a business license to do that, and
22 under those same facts, that would be a business,
23 correct?

24 MS. KIRK: Objection.

10:07:25 25 THE WITNESS: Yes.

1 Q. (Continued by MR. ADAMS) Would your answer be
2 the same if we were dealing with an auto repair shop?

3 MS. KIRK: Objection.

4 THE WITNESS: Yes.

10:07:34 5 Q. (Continued by MR. ADAMS) Would your answer be
6 the same with a shuttle service?

7 MS. KIRK: Objection.

8 THE WITNESS: Yes.

9 Q. (Continued by MR. ADAMS) Would your answer be
10:07:41 10 the same with respect to a transport business?

11 MS. KIRK: Objection.

12 THE WITNESS: Yes.

13 Q. (Continued by MR. ADAMS) Would your answer be
14 the same if we were dealing with a contractor who builds
10:07:53 15 homes, a landscaper who landscapes yards, a plumber who
16 goes out and does plumbing?

17 MS. KIRK: Objection.

18 THE WITNESS: If their business is done on
19 the property, and that's where they're doing their
10:08:07 20 business, it's a business.

21 Q. (Continued by MR. ADAMS) Okay. If the
22 business is being done somewhere else, then it's not a
23 business?

24 MS. KIRK: Objection.

10:08:16 25 THE WITNESS: If Ken parks his car in our

1 driveway and we have a business license, that doesn't
2 mean we're doing business on our property in Coyote
3 Springs, so you, you know -- Whatever.

4 Q. (Continued by MR. ADAMS) So does the business
10:08:35 5 hinge upon whether the actual goods or services are being
6 provided and money is exchanging hands on the property
7 itself?

8 MS. KIRK: Objection.

9 THE WITNESS: I don't know. I don't know.
10:08:45 10 You know what? You're confusing me.

11 Q. (Continued by MR. ADAMS) I'm trying to get
12 your understanding of what a business activity is within
13 the --

14 A. Well, I've tried to tell you. That's all I
10:08:59 15 know.

16 Q. Do you have a water tank on your property?

17 A. Yes, I do.

18 Q. Is it enclosed?

19 A. No, it's not.

10:09:08 20 Q. Can you see it from the street?

21 A. Yes, you can.

22 Q. Can you see it from other properties?

23 A. Yes, you can.

24 Q. So technically you're in violation of the CC &
10:09:14 25 R's, aren't you?

1 structure?

2 A. No.

3 Q. Okay. Paragraph one of the Declaration of
4 Restrictions states: "Each and every parcel of the
10:30:13 5 above-described premises shall be known and described as
6 residential parcels; that is to say, mobile, modular or
7 permanent dwellings may be erected and maintained upon
8 said premises, subject to the limitations with respect
9 thereto as hereinbelow set forth."

10:30:33 10 Based upon that definition of what's permitted
11 in the Coyote Springs Ranch, at least the portion of the
12 property that your home and the church is located in, the
13 church would be in violation of paragraph one, correct?

14 MS. KIRK: Objection.

10:30:44 15 THE WITNESS: I'm not sure about that.

16 Q. (Continued by MR. ADAMS) Is the church a
17 residential structure?

18 A. No.

19 MS. KIRK: Objection.

10:30:50 20 Q. (Continued by MR. ADAMS) Is it a mobile home?

21 MS. KIRK: Objection.

22 THE WITNESS: No.

23 Q. (Continued by MR. ADAMS) Is it a modular
24 home?

10:30:58 25 MS. KIRK: Objection.

1 A. I know Paul. I have met Pat.

2 Q. Okay. Do you know any of the Weirs who
3 operate Weir Stables?

4 A. I know Dennis Weir, I think.

11:51:01 5 Q. Okay. Have you spoken with Dennis Weir
6 regarding --

7 A. No.

8 Q. -- this litigation?

9 A. I have -- I don't even know where he's at.

11:51:07 10 Q. What do the Weirs do on their property, if you
11 know?

12 A. To my knowledge, they have horses. They train
13 horses.

14 Q. What for? Do you know?

11:51:18 15 A. Racing.

16 Q. Would you consider that a business being
17 conducted on the property?

18 A. No.

19 Q. Why not?

11:51:20 20 A. Because that's their hobby.

21 Q. They don't do it to make money?

22 A. That's just a side -- That's just a benefit
23 of it. Their business is Quality S Hitch.

24 Q. Okay. Do you know if they breed horses?

11:51:39 25 MS. KIRK: If you know.

1 Valley News, the, whatever you call that little thing,
2 flier.

3 Q. (Continued by MR. ADAMS) Why do you advertise
4 in Lonesome Valley News?

12:04:12 5 A. To draw people in to our business.

6 Q. So would it be accurate to say that people
7 advertise to generate --

8 A. Business.

9 MS. KIRK: Objection.

12:04:21 10 MR. ADAMS: You want to read my question
11 back?

12 (Whereupon, the preceding question was
13 read back by the court reporter.)

14 Q. (Continued by MR. ADAMS) Business income?

12:04:35 15 MS. KIRK: Objection.

16 THE WITNESS: Yes.

17 Q. (Continued by MR. ADAMS) Okay. When people
18 put addresses on their advertisement, what is the
19 purpose?

12:04:40 20 MS. KIRK: Objection.

21 THE WITNESS: To tell them where they live
22 or to tell them where their business is.

23 Q. (Continued by MR. ADAMS) Okay.

24 (Deposition exhibit four marked.)

12:05:13 25

1 (Whereupon, an off-the-record discussion
2 was had.)

3 Q. (Continued by MR. ADAMS) I've handed you what
4 has been marked as exhibit number four. Now, it's
12:05:53 5 referencing a Carlin Ranch in the business card, correct?

6 A. Yes.

7 Q. And it has an address on there of 8405 East
8 Kelly Road, correct?

9 A. Correct.

12:06:01 10 Q. Prescott Valley, Arizona, 86314, correct?

11 A. Correct.

12 Q. Now, if someone were going to want to transact
13 business with this Carlin Ranch, they would be led to
14 believe by this business card that business is at that
12:06:15 15 address shown on that business card, correct?

16 MS. KIRK: Objection.

17 THE WITNESS: This doesn't look like a
18 business to me.

19 Q. (Continued by MR. ADAMS) Does it look like a
12:06:27 20 business card to you?

21 MS. KIRK: He's asking just about --

22 THE WITNESS: Yeah.

23 Q. (Continued by MR. ADAMS) Does it look like a
24 business card?

12:06:30 25 MS. KIRK: Objection.

1 THE WITNESS: It could be a business card,
2 yes.

3 Q. (Continued by MR. ADAMS) Does it look like a
4 business card?

12:06:36 5 MS. KIRK: Objection.

6 THE WITNESS: Some business cards are like
7 this.

8 Q. (Continued by MR. ADAMS) Okay. Does it
9 appear to be a business card?

12:06:41 10 MS. KIRK: Objection.

11 THE WITNESS: Some business cards are like
12 this.

13 Q. (Continued by MR. ADAMS) Does it appear to be
14 a business card?

12:06:45 15 MS. KIRK: Objection.

16 Q. (Continued by MR. ADAMS) In your view, does
17 it appear to be a business card?

18 MS. KIRK: Objection.

19 THE WITNESS: It could be.

12:06:54 20 Q. (Continued by MR. ADAMS) I'm asking if it
21 appears to be one.

22 MS. KIRK: Objection.

23 THE WITNESS: I answered you.

24 Q. (Continued by MR. ADAMS) Do you have business
12:06:57 25 cards?

1 A. Yes, I do.

2 Q. Okay. What information is included on your
3 business cards?

4 A. What we offer.

12:07:08 5 Q. Does it --

6 A. Our --

7 Q. -- have the name of your business?

8 A. Yes, it does.

9 Q. Does it have the address where people can
12:07:14 10 patronize your business?

11 A. Yes.

12 Q. Does it have a phone number where people can
13 call to ask about what your business does or what it's
14 about?

12:07:22 15 A. Yes.

16 Q. Does it have a fax machine number on it so
17 people can fax things to you?

18 A. Yes.

19 Q. Does it have an e-mail address on it so people
12:07:31 20 can send you e-mails?

21 A. I don't know.

22 Q. Why do you provide all that information on
23 your business card?

24 A. Because it's a business, and that's what
12:07:35 25 people want to know when he gives them the business card.

1 Q. Okay. And the business card that we're
2 looking at on exhibit number four, it contains similar
3 information on it to what you include on your business
4 cards, correct?

12:07:50 5 A. No, that's not correct.

6 Q. Doesn't the business card we're looking at
7 have the name of some entity, Carlin Ranch, and the name
8 of the person, Alysia S. Carlin?

9 MS. KIRK: Objection.

12:08:03 10 THE WITNESS: I have a ranch, and I don't
11 do business on it.

12 Q. (Continued by MR. ADAMS) Okay. But is that
13 what the card says?

14 MS. KIRK: Objection.

12:08:12 15 THE WITNESS: It says Carlin --

16 Q. (Continued by MR. ADAMS) Okay. If you would
17 receive this business card and you were to call the phone
18 number identified as 775-4812, who would you expect to
19 get on the other end of the phone line?

12:08:24 20 MS. KIRK: Objection.

21 THE WITNESS: Alysia maybe.

22 Q. (Continued by MR. ADAMS) Alysia S. Carlin?

23 A. Possibly.

24 Q. Okay. And where do you believe you might be
12:08:40 25 able to find Alysia S. Carlin, based upon looking at this

1 business card identified on exhibit number four?

2 A. At her place on Carlin Ranch.

3 Q. Which is located where?

4 A. Prescott Valley.

12:08:50 5 Q. 8405 East Kelly Road --

6 A. Um-hum.

7 Q. -- correct?

8 A. Um-hum.

9 Q. Now, the photos in exhibit number four depict
12:08:59 10 a large stable; is that correct?

11 A. Yes.

12 Q. And there appears to be a number of stalls in
13 the stable, correct?

14 MS. KIRK: Objection.

12:09:09 15 THE WITNESS: Correct.

16 Q. (Continued by MR. ADAMS) Okay. Is that
17 what -- That's an accurate representation of what the
18 picture --

19 A. Yes.

12:09:14 20 Q. -- shows?

21 A. Yes.

22 Q. And you actually see horses in the top
23 photograph, correct?

24 A. Yes.

12:09:22 25 Q. And you see photographs also of horses in the

1 bottom photograph, correct?

2 MS. KIRK: What?

3 THE WITNESS: There's a couple.

4 Q. (Continued by MR. ADAMS) Okay. You can put
12:09:28 5 that one aside. Where you have your -- your business
6 located in Prescott Valley down in the Phoenix area, do
7 you have a sign up in front of your business location?

8 A. Of course.

9 Q. Why do you have a sign out front?

12:10:08 10 A. Obvious reasons.

11 Q. Well, tell me what those obvious reasons are.

12 A. To attract business.

13 Q. So people come in and pay you money for goods
14 and services, correct?

12:10:18 15 A. Yes.

16 Q. All right. And people -- You've testified
17 earlier that you advertise in the phone book for the same
18 reason, correct?

19 A. Yes.

12:10:26 20 Q. Okay.

21 (Deposition exhibit five marked.)

22 Q. (Continued by MR. ADAMS) I hand you what has
23 been marked as exhibit number five.

24 MS. KIRK: Wait a second. I want my copy
12:11:06 25 first.

1 Q. (Continued by MR. ADAMS) In the middle of
2 that --

3 MS. KIRK: Do you have mine?

4 MR. ADAMS: Yes.

12:11:10 5 MS. KIRK: Let me take a look at it first
6 before you start asking questions.

7 Q. (Continued by MR. ADAMS) In the middle of
8 exhibit number five is a listing from the phone book,
9 correct?

12:11:19 10 MS. KIRK: Do you want to look at it and
11 see if you can identify it as a phone ad?

12 THE WITNESS: It appears to be.

13 Q. (Continued by MR. ADAMS) Okay. And the way
14 this is listed, it appears that this would have come from
12:11:32 15 a Yellow Pages portion of the Qwest Dex telephone book,
16 correct?

17 A. Um-hum. Yes.

18 Q. Okay. And the Yellow Pages are a place where
19 people advertise business activities, as opposed to the
12:11:44 20 residential listings that are the white pages, correct?

21 MS. KIRK: Objection.

22 THE WITNESS: Yes.

23 Q. (Continued by MR. ADAMS) Okay. And down
24 below, you'll see at the bottom of that Yellow Pages ad
12:11:58 25 where it says Weir Stables, and then it has an address,

1 correct?

2 A. Yes, I see it.

3 Q. Is 8400 East Kelly Road located out in Coyote
4 Springs Ranch?

12:12:04 5 A. I know where Kelly Road is.

6 Q. Is it in Coyote Springs Ranch?

7 A. Yes.

8 Q. So people reading this who would be looking to
9 breed horses --

12:12:11 10 A. Um-hum.

11 Q. -- they could call Weir Stables or go to 8400
12 East Kelly Road?

13 MS. KIRK: Objection.

14 Q. (Continued by MR. ADAMS) Correct?

12:12:18 15 A. I assume so.

16 Q. So that appears to be an advertisement for
17 business purposes, correct?

18 A. Yes.

19 Q. And the photographs that are depicted on
12:12:29 20 exhibit number five, do they accurately depict the
21 condition of the property owned and operated as Weir
22 Stables?

23 MS. KIRK: Objection.

24 THE WITNESS: I recognize two of them.

12:12:40 25 MS. KIRK: Which two?

1 THE WITNESS: This one and this one.

2 MS. KIRK: On the left-hand side?

3 THE WITNESS: Yeah, the left side.

4 MR. ADAMS: Okay.

12:13:05 5 MS. KIRK: For the record, left side of
6 the advertisement that's on there.

7 Q. (Continued by MR. ADAMS) Are you aware of a
8 Christmas tree farm in your portion -- Strike that.

9 Are you aware of a Christmas tree farm
12:13:25 10 existing in the portion of Coyote Springs Ranch where you
11 live?

12 A. No, I'm not.

13 Q. Would you consider people going onto a piece
14 of property to cut down Christmas trees for Christmastime
12:13:42 15 and paying money for those Christmas trees, to be
16 business activity?

17 A. It sounds like it.

18 Q. Okay.

19 (Deposition exhibit six marked.)

12:14:29 20 Q. (Continued by MR. ADAMS) I've handed you what
21 has been marked as exhibit number six. Would you agree
22 that there is a sign at the entrance to that property?

23 A. Yes.

24 Q. What does the sign say?

12:14:49 25 A. "For hire, tractor, welding, plumbing."

1 Q. Would you agree that that sign indicates that
2 whoever is at that property would be offering services
3 that involve a tractor, welding or plumbing?

4 A. Yes.

12:15:03 5 Q. Would that be the type of thing that would be
6 done in order to generate business income?

7 MS. KIRK: Objection.

8 THE WITNESS: It depends on what kind of
9 person is doing this. If it's an old man just wanting to
12:15:17 10 find some extra, something to do, that's different than
11 business.

12 Q. (Continued by MR. ADAMS) What do you think
13 the purpose would be of whoever owns that property to put
14 up a sign that says for hire? What does for hire mean in
12:15:30 15 your view?

16 A. It means if you need some help in these
17 things, that you can call.

18 Q. Does it say for free?

19 A. No.

12:15:36 20 Q. What do you hire somebody to do?

21 A. To do something I need to be done.

22 Q. Okay. And when you hire somebody, does that
23 mean they're going to do it for free or that you have the
24 idea in mind that you're going to get it for free?

12:15:48 25 A. No.

1 Q. It means you're going to pay for it, correct?

2 A. Yes.

3 Q. So that sign says for hire, meaning somebody
4 can come and pay them for services, correct?

12:15:56 5 MR. SKWRAO: Objection.

6 THE WITNESS: Yes.

7 Q. (Continued by MR. ADAMS) Okay. And the
8 specific services it says, "tractor, welding or
9 plumbing," doesn't it?

12:16:06 10 A. Yes.

11 Q. So if I'm looking at that sign, I would be led
12 to believe that I could hire somebody to operate a
13 tractor for me, do some welding for me, or do some
14 plumbing for me, correct?

12:16:16 15 A. I wouldn't call it a business, but, yes.

16 Q. Okay. Have you ever seen that property,
17 driving along there on Coyote Springs Ranch?

18 A. No, I have not.

19 Q. Okay. Have you ever spoken to the people at
12:17:08 20 that parcel of property where that sign exists --

21 MS. KIRK: Objection.

22 Q. (Continued by MR. ADAMS) -- as depicted on
23 exhibit number six?

24 MS. KIRK: Objection.

12:17:14 25 THE WITNESS: No, not that I'm aware of.

1 (Deposition exhibit seven marked.)

2 Q. (Continued by MR. ADAMS) I hand you what has
3 been marked as exhibit number seven.

4 MS. KIRK: I've got it. Before you ask
12:18:02 5 her a question, just so you know, I have it.

6 Okay. Go ahead.

7 Q. (Continued by MR. ADAMS) Exhibit number seven
8 contains a phone book advertising similar to the one we
9 looked at with respect to Weir Stables, correct?

12:18:25 10 A. Correct.

11 Q. It also is listing -- As a matter of fact,
12 this appears to be the same advertising page from the
13 Weir Stables, correct?

14 A. Correct, um-hum.

12:18:41 15 Q. Okay. And there's a section in there dealing
16 with horse breeders, correct?

17 A. Correct.

18 Q. And then it says, Double Eagle Performance
19 Horses and has a phone number, correct?

12:18:53 20 A. Yes.

21 Q. Okay. So who would you expect to get on the
22 phone if you called 772-8560?

23 MS. KIRK: Objection.

24 THE WITNESS: Somebody that lives there.

12:19:03 25 Q. (Continued by MR. ADAMS) Somebody that works

1 for --

2 A. Or whatever.

3 Q. -- Double Eagle Performance Horses?

4 A. Yes.

12:19:04 5 Q. And what's the caption for the businesses
6 shown underneath where -- or shown with the people Double
7 Eagle Performance Horses?

8 MS. KIRK: Objection.

9 THE WITNESS: Excuse me?

12:19:16 10 Q. (Continued by MR. ADAMS) Oh, that's a
11 horrible question.

12 MS. KIRK: How is it listed?

13 MR. ADAMS: Yeah, thank you, Counselor.

14 Q. (Continued by MR. ADAMS) How is Double Eagle
12:19:26 15 Performance Horses listed in the phone book listing?

16 A. Horse breeders.

17 Q. Okay. So if you were to call that number, you
18 would expect to talk to somebody at Double Eagle
19 Performance Horses, and you would expect to talk to them
12:19:38 20 about horse breeding, correct?

21 MS. KIRK: Objection.

22 THE WITNESS: I suppose.

23 Q. (Continued by MR. ADAMS) Okay.

24 (Deposition exhibit eight marked.)

25 (Whereupon, an off-the-record discussion

1 was had.)

2 Q. (Continued by MR. ADAMS) While we're waiting,
3 with respect to the properties that are identified in the
4 exhibits that I've recently shown you that contain
12:21:05 5 photographs on them, you haven't sued them or sought to
6 enforce any of the CC & R's against any of those property
7 owners, have you?

8 A. No, I haven't.

9 Q. Okay. You indicated earlier that you have
12:21:34 10 signs out on the front of your business, correct?

11 A. Yes.

12 Q. And the purpose of having those signs up is so
13 people can see where your business is operating, correct?

14 A. Yes. In a business district, yeah.

12:21:48 15 Q. Now, there is a thing with wheels on it shown
16 on exhibit number eight that has a sign on it, correct?

17 A. Correct.

18 Q. And then it has a phone number -- It says on
19 the placard there, "Custom Signs & Designs," and then it
12:22:07 20 has a phone number underneath, correct?

21 A. Yes.

22 Q. Do you recognize where that little trailer
23 thing with that sign on it is located?

24 A. I've never seen it.

12:22:13 25 Q. Okay. By looking at the property in this

1 background, you can't identify whether that's located in
2 the portion of Coyote Springs Ranch where your property
3 is located?

4 A. No, I've never seen it. It doesn't look
12:22:28 5 familiar to me.

6 Q. Okay. Would you agree that whoever put up
7 that sign for Custom Signs & Designs is doing so for
8 purposes of getting people to call that phone number
9 shown on the sign?

10 MS. KIRK: Objection.

11 THE WITNESS: It appears to be that way.

12 Q. (Continued by MR. ADAMS) There wouldn't be
13 any other purpose for putting that sign up, would there?

14 MS. KIRK: Objection.

15 THE WITNESS: No.

16 Q. (Continued by MR. ADAMS) Someone wouldn't do
17 that randomly, just for no reason, would they?

18 A. No.

19 MS. KIRK: Objection.

12:23:03 20 Q. (Continued by MR. ADAMS) Do you know where
21 8750 East Faraway Place would be?

22 A. No.

23 Q. Is that located in the portion of Coyote
24 Springs Ranch where you're located?

12:23:12 25 MS. KIRK: Objection.

1 THE WITNESS: I'm not sure. I know
2 Faraway Place is in the, is in the north end of Coyote
3 Springs, but I'm not sure how far back.

4 Q. But it's not in downtown Prescott Valley, is
12:23:24 5 it?

6 A. No.

7 Q. It is somewhere in Coyote Springs --

8 A. Yes, it is.

9 Q. -- Ranch; you just don't know exactly where it
12:23:33 10 is, correct?

11 A. I'm sorry. Yes.

12 (Deposition exhibit nine marked.)

13 Q. (Continued by MR. ADAMS) By the way, you
14 haven't spoken to the owner of the property that was
12:24:21 15 located at where that sign that we just talked about in
16 exhibit number eight is, have you?

17 A. No, I don't know where it's at.

18 Q. I hand you what has been marked as exhibit
19 number nine. Do you recognize the property depicted in
12:24:40 20 the photograph?

21 A. I may have seen it. I'm not sure.

22 Q. And to the right of the photograph is a
23 business card advertising All New Again Paintless Dent
24 Repair, correct?

12:24:53 25 A. Yes.

1 Q. Okay. It provides on there, "Automotive Hail
2 & Door Ding Repair" also, correct?

3 A. Yes.

4 Q. And then it says "Free Estimates," correct?

12:25:05 5 A. Yes.

6 Q. It doesn't say anywhere on the card that the
7 services that are ultimately going to be rendered are
8 also going to be free, does it?

9 A. No.

12:25:10 10 MS. KIRK: Objection.

11 Q. (Continued by MR. ADAMS) So would your belief
12 be upon looking at this card that whoever is handing that
13 card out would be intending to generate business income?

14 MS. KIRK: Objection.

12:25:20 15 THE WITNESS: Yes.

16 Q. (Continued by MR. ADAMS) Okay. Now, it
17 identifies a person by the name of Bruce Pettitt,
18 correct?

19 A. Yes.

12:25:27 20 Q. Okay. And Bruce Pettitt was, if you recall,
21 someone we talked about, you said you didn't know --

22 A. Yes.

23 Q. -- earlier.

24 It has a phone number that you can call,
12:25:37 25 correct?

1 A. Yes.

2 Q. And so what would happen -- Who would you
3 expect to talk to by calling that phone number?

4 MS. KIRK: Objection.

12:25:44 5 THE WITNESS: Possibly Bruce.

6 Q. (Continued by MR. ADAMS) And it would be at
7 the business identified there, All New Again Paintless
8 Dent Repair, correct?

9 MS. KIRK: Objection.

12:25:56 10 THE WITNESS: It's a possibility, yes.

11 Q. (Continued by MR. ADAMS) Okay. So it
12 appears, based upon that, that the business address for
13 All New Again Paintless Dent Repair is at 8750 East
14 Faraway Place, Prescott Valley, Arizona, 86314, correct?

12:26:09 15 MS. KIRK: Objection.

16 THE WITNESS: Possibly, yes.

17 (Deposition exhibit ten marked.)

18 Q. (Continued by MR. ADAMS) Okay. I've handed
19 you what has been marked as exhibit number ten. Do you
12:27:27 20 know where 8815 East Spurr Lane is located?

21 A. No.

22 Q. Do you recognize the name of that street?

23 A. Yes.

24 Q. And that's a street that's located in the area
12:27:34 25 of Coyote Springs Ranch where you live, correct?

1 A. Yes.

2 Q. And attached -- And on the right-hand side of
3 exhibit number ten is a business card, correct?

4 MS. KIRK: Objection.

12:27:46 5 THE WITNESS: There is an address there.

6 Q. (Continued by MR. ADAMS) Okay. You see the
7 white outlining of the business card there?

8 A. Yes.

9 MS. KIRK: Objection.

12:27:53 10 Q. (Continued by MR. ADAMS) So you believe
11 that's a business card, correct?

12 MS. KIRK: Objection.

13 THE WITNESS: It could be a business card.

14 Q. (Continued by MR. ADAMS) Okay. It has the
12:28:04 15 name of a corporation called New Life Landscapers, Inc.
16 on it, correct?

17 A. Correct.

18 Q. And it has an address for that business,
19 correct?

12:28:11 20 MS. KIRK: Objection.

21 THE WITNESS: Correct.

22 Q. (Continued by MR. ADAMS) Okay. So if someone
23 gave you that business card, you would expect, if you
24 drove to 8815 East Spurr Lane, you would expect that
12:28:25 25 whatever was there would be New Life Landscapers, Inc.,

1 correct?

2 MS. KIRK: Objection.

3 THE WITNESS: Yeah, the owners, yes.

4 Q. (Continued by MR. ADAMS) Okay. If you look
12:28:30 5 at the photographs, the top photograph, it appears to be
6 a large truck and even a dump truck, correct, two
7 separate vehicles?

8 MS. KIRK: What did you say, a large dump
9 truck?

12:28:44 10 THE WITNESS: There's a club cab truck.

11 Q. (Continued by MR. ADAMS) There's a white
12 truck and a blue or black truck?

13 A. I barely see it. Yeah, I see two trucks.

14 Q. One appears to be -- The one in the back
12:28:55 15 that's blueish or blackish, or whatever, it appears to be
16 a dump truck. It has some light tan-colored planks at
17 the top of the bin for the dump truck.

18 A. (Witness nods head.)

19 Q. And then the white cab truck that's in front
12:29:08 20 of it, or I should say, when you're looking at it,
21 appears to be a little bit in front of and behind the
22 dump truck, appears to be a flat-bed truck, correct?

23 MS. KIRK: Objection.

24 THE WITNESS: Yes.

12:29:21 25 Q. (Continued by MR. ADAMS) Okay. Which would

1 be the types of trucks you would expect a landscaping
2 company to own, correct?

3 MS. KIRK: Objection.

4 THE WITNESS: Yes.

12:29:24 5 Q. (Continued by MR. ADAMS) Okay.

6 (Deposition exhibits eleven and twelve
7 marked.)

8 Q. (Continued by MR. ADAMS) I've handed you what
9 has been marked as exhibit number eleven. Do you
10 recognize the property depicted on that exhibit?

11 A. Yes.

12 Q. Okay. We've talked about that particular
13 property previously today, haven't we?

14 A. That's Curtis's.

12:30:46 15 Q. Curtis who?

16 A. Well, it says Kincheloe. I didn't know his
17 last name.

18 Q. And 8950 East Mummy View Drive, where is that
19 located?

12:30:52 20 A. I assume by this that it's that property.
21 I've never seen the address on there.

22 Q. Okay. Do you know where East Mummy View Drive
23 is in your section of --

24 A. I know where --

12:31:02 25 Q. -- Coyote Springs Ranch Road is?

1 A. I'm sorry. I know where Mummy View is.

2 Q. Okay. And that's located in your section of
3 Coyote Springs Ranch, correct?

4 A. Yes.

12:31:16 5 Q. Okay. What does Mr. Kincheloe's business card
6 say?

7 MS. KIRK: Objection.

8 THE WITNESS: Coyote Curt's Auto Repair.

9 Q. (Continued by MR. ADAMS) What kind of
12:31:28 10 business do you believe is being advertised, by looking
11 at that business card?

12 MS. KIRK: Objection.

13 THE WITNESS: Car repair.

14 Q. (Continued by MR. ADAMS) Okay. In fact, it
12:31:34 15 says, in quotes, "We fix any car, truck or contraption!"
16 with an exclamation point, correct?

17 A. Correct.

18 Q. So that would be a pretty broad representation
19 of what they think they can fix, correct?

12:31:45 20 MS. KIRK: Objection.

21 THE WITNESS: True.

22 Q. (Continued by MR. ADAMS) What kinds of
23 vehicles would you think that they can repair, based upon
24 the business card shown on exhibit number eleven?

12:31:58 25 MS. KIRK: Objection.

1 THE WITNESS: He'll try anything, it
2 sounds like.

3 Q. (Continued by MR. ADAMS) Does it identify any
4 specific types of vehicles?

12:32:06 5 MS. KIRK: Objection.

6 THE WITNESS: Cars, trucks, or
7 contraptions.

8 Q. (Continued by MR. ADAMS) Okay. What about
9 above it? What does it say above that statement?

12:32:14 10 A. Japanese, Cummins, Powerstroke.

11 Q. Okay. Do you know what a Cummins engine is?

12 A. It's a diesel engine.

13 Q. Okay. And do you know what a Powerstroke
14 engine is?

12:32:25 15 A. Belongs to a truck, I suppose. I'm not sure.

16 Q. And Japanese, would that indicate that he can
17 fix a Japanese person or a Japanese car?

18 MS. KIRK: Objection.

19 THE WITNESS: Auto.

12:32:33 20 Q. (Continued by MR. ADAMS) All right. And then
21 there's a phone number on there, correct?

22 A. Yes.

23 Q. And down below the phone number, what does it
24 say?

12:32:43 25 A. "Certified, licensed, twenty-two years

1 experience."

2 Q. So would that indicate to you, if you were
3 given this business card, that this person has a business
4 license and is allowed to operate with that business
12:32:52 5 license?

6 MS. KIRK: Objection.

7 THE WITNESS: He is licensed.

8 Q. (Continued by MR. ADAMS) Okay. Based upon
9 the business card, that's what you would be led to
12:32:59 10 believe, correct?

11 A. Yes.

12 Q. Okay. And if you look at the photograph
13 that's at the top of exhibit number eleven, it appears to
14 be that there is a house that's kind of right in the
12:33:10 15 middle of the photograph, correct?

16 A. Yes.

17 Q. And then to the right of that there is a big
18 garage with two very large or tall garage doors, correct?

19 A. Yes.

12:33:20 20 Q. And would you agree that having a large garage
21 with two large construction doors like that would be
22 consistent with operating an automobile repair shop that
23 works on trucks and diesels?

24 MS. KIRK: Objection.

12:33:33 25 THE WITNESS: It could be.

1 Q. (Continued by MR. ADAMS) Would that be a
2 logical assumption, based upon looking at the photograph,
3 in conjunction with looking at the business card?

4 MS. KIRK: Objection. Answer if you can.

12:33:48 5 THE WITNESS: Possibly.

6 Q. (Continued by MR. ADAMS) Does it appear,
7 based upon looking at the photograph and the business
8 card, that business activity is occurring at 8950 East
9 Mummy View Drive?

12:33:57 10 MS. KIRK: Objection.

11 THE WITNESS: I can't tell by looking at
12 the picture.

13 Q. (Continued by MR. ADAMS) But looking at the
14 picture in connection with looking at the photograph that
12:34:02 15 has the address of the business located at 8950 East
16 Mummy View Drive, would you agree that that's -- it's
17 logical to assume that business is being conducted at
18 that address?

19 MS. KIRK: Objection.

12:34:13 20 THE WITNESS: It's a possibility.

21 Q. (Continued by MR. ADAMS) Would you agree
22 looking just at that, that that would to be a logical
23 assumption?

24 MS. KIRK: Objection. What do you mean
12:34:21 25 just at that? This, all of this?

1 MR. ADAMS: No speaking objections,
2 please.

3 THE WITNESS: Yes, he could be, but I'm
4 not sure. This doesn't tell me that he's running a
12:34:33 5 licensed business there.

6 MR. ADAMS: Okay. We can take our lunch
7 break now. I'll have a few more questions when we come
8 back.

9 (Whereupon, a luncheon recess was had.)

13:46:17 10 Q. (Continued by MR. ADAMS) Earlier in your
11 deposition, I asked you the following question: "Did you
12 only talk about that issue in context of the Coxes' use
13 of their property or in a more global sense with respect
14 to all of the people who owned Coyote Springs Ranch
13:46:39 15 property?"

16 Your response was, "Well, the Coxes are the
17 ones that had motivated us to try to get some momentum
18 going. Since there is no association, we are trying to
19 get some momentum going, so that when we do, when we
13:46:55 20 become aware of violations like businesses, that we can
21 stop it."

22 What do you mean when you say you were
23 motivated?

24 A. It was because of their apparent business, and
13:47:09 25 the scale of that business, and it being obvious to us,

1 that motivated us to try to get some of the homeowners
2 together to see if we could stop them from, you know,
3 keeping their business there.

13:47:36 4 Q. Was the key consideration, in your view, the
5 size of what they were doing there?

6 MS. KIRK: Objection.

7 THE WITNESS: No.

8 Q. (Continued by MR. ADAMS) So the size of
9 whatever business operation that might be going on out in
13:47:47 10 Coyote Springs Ranch isn't what your concern is. Your
11 concern is that it's just occurring, period?

12 MS. KIRK: Objection.

13 THE WITNESS: The size isn't necessarily
14 the key part. It's that it is an obvious commercial
13:48:03 15 business.

16 Q. (Continued by MR. ADAMS) So --

17 A. And that's what we don't want out there.

18 Q. So are you not concerned, then, with
19 businesses that are not obvious?

13:48:13 20 MS. KIRK: Objection.

21 THE WITNESS: How can I be concerned with
22 something that I can't see?

23 Q. (Continued by MR. ADAMS) Would you please
24 pull up exhibit number one, which is the deed of
13:48:23 25 restrictions?

1 MS. KIRK: It's this one right here.

2 THE WITNESS: Okay.

3 Q. (Continued by MR. ADAMS) Do the deed of
4 restrictions contain a provision that allows commercial
13:48:33 5 activity that's not obvious?

6 MS. KIRK: Objection.

7 THE WITNESS: It doesn't say that.

8 Q. (Continued by MR. ADAMS) Does it imply that,
9 in your view?

13:48:41 10 MS. KIRK: Objection.

11 THE WITNESS: No, but I'm not all-seeing
12 and all-knowing.

13 Q. (Continued by MR. ADAMS) Okay. But the deed
14 of restrictions don't allow somebody to conduct a
13:48:50 15 business on their property that's not open and obvious to
16 the property owners out there --

17 MS. KIRK: Objection.

18 Q. (Continued by MR. ADAMS) -- correct?

19 A. I wouldn't open a business, because I know
13:48:58 20 that the CC & R's state that there's no business. I
21 can't tell you what other people do.

22 Q. Okay. But you have an aboveground water tank
23 on your property that's not shielded from view, and you
24 know that the CC & R's prohibit that, correct?

13:49:13 25 A. That's correct; although, it's hard to get

1 your water to flow down if it's not up.

2 Q. So it's okay to have an aboveground water tank
3 and violate the CC and R's so that you can achieve a
4 practical use of your property; is that correct?

13:49:30 5 A. I didn't --

6 MS. KIRK: Objection.

7 THE WITNESS: I didn't say that.

8 Q. (Continued by MR. ADAMS) So you think it's
9 okay to have an aboveground water tank that's not
13:49:42 10 shielded --

11 MS. KIRK: Objection.

12 Q. (Continued by MR. ADAMS) -- is that correct?

13 MS. KIRK: Sorry. Objection.

14 THE WITNESS: No, I don't think it's okay.

13:49:50 15 Q. (Continued by MR. ADAMS) So you think it
16 would be appropriate for the Coxes to file a lawsuit
17 against you because you violated the CC & R's with your
18 aboveground water tank?

19 MS. KIRK: Objection.

13:49:57 20 THE WITNESS: If they did, I would change
21 it.

22 Q. (Continued by MR. ADAMS) You would change
23 what?

24 A. The water tank.

13:50:03 25 Q. You don't think because they haven't filed

1 suit you should change it?

2 MS. KIRK: Objection.

3 THE WITNESS: Not at this point.

4 Q. (Continued by MR. ADAMS) Okay. So you think
13:50:09 5 you should be entitled to continue your violation, but
6 the Coxes should not?

7 MS. KIRK: Objection.

8 Q. (Continued by MR. ADAMS) Is that your
9 position?

13:50:16 10 A. My water tank is not a business.

11 Q. But your water tank violated the CC & R's,
12 correct?

13 A. It's a --

14 MS. KIRK: Objection.

13:50:23 15 THE WITNESS: It's a minor violation that
16 has gone on out there since the days that I was there. I
17 didn't realize when we put that in that -- I didn't
18 remember that, no, we're not supposed to have a water
19 tank.

13:50:39 20 Q. (Continued by MR. ADAMS) You got the
21 Declaration of Restrictions --

22 A. I didn't --

23 Q. -- before you bought the property, correct?

24 A. I didn't read it when I was building our home.
13:50:45 25 I'm sorry.

1 Q. But you got the CC & R's when you bought the
2 property, correct?

3 MS. KIRK: Objection.

4 THE WITNESS: No.

13:50:52 5 Q. (Continued by MR. ADAMS) You knew they
6 existed, didn't you?

7 A. I knew they existed.

8 Q. So because you knew they existed and because
9 they were recorded at the county recorder's office, you
13:51:00 10 are charged with responsibility for complying with them,
11 aren't you?

12 MS. KIRK: Objection.

13 THE WITNESS: Yes.

14 Q. (Continued by MR. ADAMS) Okay. And you
13:51:06 15 haven't, with respect to your water tank, correct?

16 MS. KIRK: Objection.

17 THE WITNESS: The water tank is
18 aboveground.

19 Q. (Continued by MR. ADAMS) Does it violate the
13:51:19 20 CC & R's?

21 A. If we're not supposed to have one, I suppose
22 it does.

23 Q. Okay. In your answer where you were
24 discussing momentum, I would like to know what you meant.

13:51:27 25 A. What I meant is that one person cannot afford

1 violation. This is the one at hand. This is the one
2 we're working on. We'll address other violations one at
3 a time, if we do, at some other time. I don't know
4 what's going to happen in the future, so . . .

14:20:57 5 Q. Earlier today we had a lengthy discussion
6 regarding how you defined a business. Do you remember
7 that discussion?

8 A. Oh, yes.

9 Q. Okay. I'm reading from the Webster's New
14:21:15 10 World Dictionary the Third College Edition, that has a
11 copyright date of 1988 by Simon & Schuster, Inc. What
12 I'd like to know is if you would agree with Webster's
13 Dictionary's definition of what a business is. It says
14 on page 189, "A business is one's work, occupation or
14:21:40 15 profession, a special task due to your function, a matter
16 of fairer activity and the buying and selling of
17 commodities and services. Commerce. Trade. A
18 commercial or industrial establishment, store, factory,
19 et cetera. The trade or patronage of customers. A
14:22:05 20 commercial practice or policy."

21 Would you agree that in your mind, would your
22 definition of business agree with Webster's Dictionary's
23 definition of business?

24 MS. KIRK: Counselor, I'm going to object
14:22:19 25 at this point. I don't know if what you read was

1 entirely what's contained in that definition. I know in
2 dictionaries they set forth typically one from any number
3 of definitions.

4 MR. ADAMS: Are you instructing your
14:22:31 5 client not to answer.

6 MS. KIRK: No. I'm asking you please to
7 provide me --

8 MR. ADAMS: It's a speaking objection
9 then. You can object to the form of the question.

14:22:40 10 Q. (Continued by MR. ADAMS) Please answer the
11 question.

12 MS. KIRK: No. Object as to form. Based
13 upon what he says the definition is, answer.

14 THE WITNESS: I wouldn't argue with
14:22:52 15 Webster, but I'm not a Webster's dictionary, so, you
16 know.

17 Q. (Continued by MR. ADAMS) Okay. Would you
18 agree that the sale of hay would fall within the
19 definition of business as we just discussed from the
14:23:04 20 Webster's Dictionary?

21 MS. KIRK: Object as to form.

22 THE WITNESS: If I sold a bale of hay, it
23 wouldn't be my business, so not necessarily.

24 Q. (Continued by MR. ADAMS) Is that a business
14:23:16 25 transaction where someone sells hay to somebody else for

1 money --

2 A. Not --

3 Q. -- in your view?

4 A. -- necessarily.

14:23:21 5 Q. Okay. Commercial is defined in the same
6 dictionary as follows: "Of or connected with commerce or
7 trade, of or having to do with stores, office buildings,
8 et cetera, made, done or operating primarily for profit,
9 designed to have wide or popular appeal." And then it
14:23:53 10 has some adverb references to that as well.

11 MS. KIRK: Object as to form.

12 Q. (Continued by MR. ADAMS) Commercial activity,
13 as you view it, would your definition be the same as what
14 I just quoted from Webster's Dictionary?

14:24:05 15 MS. KIRK: Object as to form.

16 THE WITNESS: I don't know. You know, I'm
17 sorry. I didn't even hardly hear what you said. I'm
18 sorry. My mind is just not with you. I'm sorry. If you
19 want to read it again, I'll try to listen better.

14:24:19 20 Q. (Continued by MR. ADAMS) Okay. Do you have a
21 definition for what commerce is?

22 A. I'm not good at definitions.

23 Q. Okay. Reading from page 280 of the same
24 dictionary --

14:24:33 25 A. Okay.

1 Q. -- why don't you go ahead and read what it
2 says what commerce is?

3 A. Okay. Okay.

4 Q. Read it out loud if you would please?

14:24:42 5 MS. KIRK: Let me see what you're looking
6 at.

7 THE WITNESS: "Commerce. To gather
8 merchandise, the buying and selling of goods, especially
9 when done on a large scale between cities, states or
14:24:57 10 countries. Trade." Okay.

11 Q. (Continued by MR. ADAMS) Okay. Would you say
12 that somebody who sells hay for money is engaging in
13 commerce?

14 MS. KIRK: Object as to form.

14:25:13 15 THE WITNESS: Well, if I sold hay to my
16 mother, like I did the other day for her garden, because
17 she wanted to pay me for it, I don't consider that
18 commerce, no.

19 Q. (Continued by MR. ADAMS) Okay. Would you
14:25:25 20 consider it commerce if someone who is unrelated to the
21 person, who is doing the selling, comes to the seller,
22 wants to buy some hay, asks to buy the hay, is given the
23 hay and money exchanges hands; is that commerce?

24 MS. KIRK: Objection as to form.

14:25:46 25 THE WITNESS: It could be.

1 Q. (Continued by MR. ADAMS) Would you consider
2 that to be a business type of activity --

3 A. It could be.

4 Q. -- based upon the definition of what commerce
14:25:55 5 is there?

6 A. It could be. I'm not sure. I -- I mean,
7 there's more than one way to say something, and there's
8 more than one form of barter or commerce, whatever you
9 want to call it. I don't know. You know, this is --

14:26:15 10 Q. Anything that I read from Webster's
11 Dictionary, did it include a reference indicating that
12 either business or commerce required that somebody engage
13 in it to make a living in order for it to fall within the
14 definition of those words?

14:26:35 15 MS. KIRK: Object as to form.

16 THE WITNESS: I don't think it said a
17 living. It didn't use that word.

18 Q. (Continued by MR. ADAMS) Earlier today you
19 didn't --

14:26:45 20 A. I said it didn't use that word.

21 Q. Okay. So would your definition change at all
22 of what a business is based upon what Webster's
23 Dictionary says?

24 A. Well, my definition of a lot of things is
14:26:58 25 different than Webster's, because I'm not a Webster. You

1 know, if I want to look something up because I'm not sure
2 of it, I'll look it up. But you know what, I don't know.
3 I don't know.

14:27:11 4 Q. Okay. Let's look at the Declaration of
5 Restrictions, which is exhibit number one, if you would
6 please?

7 A. Oh, brother.

8 Q. Paragraph number two, do you see a definition
9 in there for what constitutes a business or commercial
14:27:22 10 activity?

11 A. Nothing -- Not from Webster's, no.

12 Q. Does it contain a definition that requires in
13 order for it to be considered a business or a commercial
14 activity that the activity be engaged in to make a
14:27:39 15 living?

16 A. No, they expect people to know what a business
17 is, obviously. You know, this is -- No, it doesn't
18 define all these words.

19 Q. Okay. Do you know who Chip Dove is?

14:28:10 20 A. No.

21 Q. How about George Acton, A-C-T-O-N?

22 A. Never heard of him.

23 Q. Wendy Chargose?

24 A. No.

14:28:24 25 Q. C-H-A-R-G-O-S-E. William Furbee?

1 violation. This is the one at hand. This is the one
2 we're working on. We'll address other violations one at
3 a time, if we do, at some other time. I don't know
4 what's going to happen in the future, so . . .

14:20:57 5 Q. Earlier today we had a lengthy discussion
6 regarding how you defined a business. Do you remember
7 that discussion?

8 A. Oh, yes.

9 Q. Okay. I'm reading from the Webster's New
14:21:15 10 World Dictionary the Third College Edition, that has a
11 copyright date of 1988 by Simon & Schuster, Inc. What
12 I'd like to know is if you would agree with Webster's
13 Dictionary's definition of what a business is. It says
14 on page 189, "A business is one's work, occupation or
14:21:40 15 profession, a special task due to your function, a matter
16 of fairer activity and the buying and selling of
17 commodities and services. Commerce. Trade. A
18 commercial or industrial establishment, store, factory,
19 et cetera. The trade or patronage of customers. A
14:22:05 20 commercial practice or policy."

21 Would you agree that in your mind, would your
22 definition of business agree with Webster's Dictionary's
23 definition of business?

24 MS. KIRK: Counselor, I'm going to object
14:22:19 25 at this point. I don't know if what you read was

1 entirely what's contained in that definition. I know in
2 dictionaries they set forth typically one from any number
3 of definitions.

4 MR. ADAMS: Are you instructing your
14:22:31 5 client not to answer.

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1 Mark W. Drutz, # 006772
2 Jeffrey R. Adams, #018959
3 Sharon Sargent-Flack, #021590
4 **MUSGROVE, DRUTZ & KACK, P.C.**
5 1135 Iron Springs Road
6 Prescott, Arizona 86305
7 (928) 445-5935

8 Attorneys for Defendants

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 **JOHN B. CUNDIFF and BARBARA C.**
12 **CUNDIFF, husband and wife; BECKY**
13 **NASH, a married woman dealing with her**
14 **separate property; KENNETH PAGE and**
15 **KATHRYN PAGE, as Trustee of the Kenneth**
16 **Page and Catherine Page Trust,**

17 **Plaintiffs,**

18 **v.**

19 **DONALD COX and CATHERINE COX,**
20 **husband and wife,**

21 **Defendants.**

Case No. CV 2003-0399

Division No. 1

**DEFENDANTS' STATEMENT OF
FACTS IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT RE:
DECLARATION VAGUENESS AND
AMBIGUITY**

*(Assigned to the Honorable David L.
Mackey)*

22 Pursuant to Rule 56, Ariz. R. Civ. P., Defendants Donald and Catherine Cox submit their
23 hereby submit their Separate Statement of Facts in Support of Defendants' Motion for Summary
24 Judgment Re: Declaration Vagueness and Ambiguity ("SSOF"):

25 1. Paragraph 2 of the Declaration of Restrictions that was recorded on June 13, 2004 in
26 the Official Records of Yavapai County, Arizona at Book 416, Page 680 ("**Declaration**") states:

27 No trade, business, profession or any other type of commercial or
28 industrial activity shall be initiated or maintained within said property
or any portion thereof.

JEANNE HICKS, CLERK
RECEIVED
NIGHT DEPOSITORY
2005 JUN 24 PM 7:40



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C.
CUNDIFF, husband and wife;
ELIZABETH NASH, a married woman
dealing with her separate
property; KENNETH PAGE and
KATHERYN PAGE, as Trustees of
the Kenneth Page and Katheryn
Page Trust,

No. CV 2003 0399

Plaintiffs,

vs.

DONALD COX and CATHERINE COX,
husband and wife,

Defendants.

DEPOSITION OF JOHN B. CUNDIFF

Prescott Valley, Arizona
August 25, 2004
9:11 a.m.

REPORTED BY:
RENA F. LOTT, RPR
Certified Court Reporter
Certificate No. 50495

LOTT REPORTING, INC.

316 North Alarcon Street
Prescott, AZ 86301
928.776.1169

ORIGINAL

1 your answers verbally rather than shaking your head or
2 nodding your head, because those types of responses are
3 difficult for the court reporter to take down. Is that
4 fair?

09:14:15 5 A. Yes.

6 Q. Sometimes I may ask questions that your
7 attorney objects to. And unless she instructs you to not
8 respond to the question after she has asserted her
9 objection, you are permitted to go ahead and respond to
09:14:32 10 the question, if you understand it. Okay?

11 A. Okay.

12 Q. I would also state that if I ask you a
13 question and you respond to it, I'm going to assume that
14 you understood it. Is that fair?

09:14:49 15 A. Yes.

16 Q. If I ask you a question that you don't fully
17 understand, I'm going to ask that you ask me to either
18 restate the question or rephrase it in a manner that you
19 do understand; is that fair?

09:15:01 20 A. Um-hum. Yes.

21 Q. Okay. Tell me about your educational
22 background.

23 A. Well, I have a -- I went to college for a
24 brief time, and then I went through some service schools
09:15:20 25 when I was in the navy. That's about it.

1 Q. Where did you go to college?

2 A. Phoenix College, after my discharge from the
3 service.

4 Q. What branch of the service were you in?

09:15:31 5 A. Navy.

6 Q. What did you do in the navy?

7 A. Well, I was -- I went to school to be an
8 aircraft mechanic. And I was in the naval air. I was in
9 Iwakuni, Japan for a year, and then three years aboard
09:15:55 10 ships and at bases.

11 Q. What did you study at Phoenix College?

12 A. Business administration.

13 Q. How many years did you study?

14 A. No, I said briefly. It was just a short time.

09:16:12 15 Then I needed to make a living, so I had to quit and go
16 to work.

17 Q. When you say that you were only there a short
18 time, could you please define that?

19 A. About three months.

09:16:21 20 Q. Would that have been, then, the equivalent of
21 one semester of study that you had at Phoenix College?

22 A. I'm not sure.

23 Q. Did you go for a full term --

24 A. No.

09:16:26 25 Q. -- or did you drop out before you finished?

1 A. I dropped out before that.

2 Q. Mr. Cundiff, I would again reiterate that you
3 allow me to finish my question before asserting your
4 answer so we're not speaking over each other. Okay?

09:16:40 5 A. Yes.

6 Q. What classes do you recall taking at Phoenix
7 College?

8 A. I took some accounting classes, and, you know,
9 that's been over 50 years ago. I really don't remember,
09:17:00 10 you know, all the classes that I took. Very few. I only
11 mentioned that. I was only -- like I said, you know,
12 what? In the interest of truthfulness, I was only there
13 a short time.

14 Q. You can't remember taking anything, other than
09:17:19 15 accounting classes?

16 A. No, that's about the only thing I recall right
17 now.

18 Q. Now, you indicated that you were studying
19 business at Phoenix College?

09:17:23 20 A. It's called -- Well, I was enrolled in
21 business administration, yeah.

22 Q. And the only classes you took were with
23 accounting?

24 A. That's the only ones I recall, sir.

09:17:34 25 Q. After you left Phoenix College, what did you

1 do?

2 A. I was an iron worker.

3 Q. Could you explain to me what an iron worker
4 does?

09:17:42 5 A. They erect buildings, install reinforcing
6 steel. And that's the only two things I was involved in.

7 Q. How long were you in that profession?

8 A. 30 years.

9 Q. What was your -- What was the name of your
09:18:05 10 employer?

11 A. Soule Steel Company.

12 Q. Where was that located?

13 A. Phoenix.

14 Q. Do you have an address for that employer?

09:18:10 15 A. They were on Indian School Road, just south of
16 Grand. That's where they were when I retired.

17 Q. And, if you would please, tell me what years
18 you were employed there.

19 A. Well, I was an iron worker from 19 -- let's
09:18:33 20 see -- 1955, and -- let's see -- 30 years. I guess that
21 would be 1985, I guess.

22 Q. What happened in 1985, after you left that
23 employment? Strike that.

24 What did you do for a living following your
09:18:50 25 retirement from that profession?

1 A. Well, let's see. I worked at a warehouse
2 filling orders. I worked for an automotive garage, and
3 went after parts. I sold real estate. And I worked for
4 the post office for a short time.

09:19:35 5 Q. Could you elaborate? Or strike that.

6 What was the name of your employer at this
7 warehouse that you worked at?

8 A. I don't remember. It was a beauty supply
9 shop. I don't recall it.

09:19:46 10 Q. What exactly did you do there?

11 A. Fill orders.

12 Q. Where was this beauty supply shop located?

13 A. I can't recall the address. I can tell you
14 about where it was in Phoenix, if that's of any aid to
09:20:07 15 you.

16 Q. When you say you were required to fill orders,
17 what does that entail, or did that entail?

18 A. They give you a list and you take them off the
19 shelves and you put them together to ship to -- It was a
09:20:23 20 wholesale operation, to ship to the retailers.

21 Q. Did you have any interaction with any of the
22 retailers yourself?

23 A. No.

24 Q. All of your interaction at the warehouse
09:20:34 25 filling these orders was merely with fellow employees who

1 were likewise doing what you were doing?

2 A. Pretty much, yes.

3 Q. How long were you in that position?

4 A. Oh, six months, I guess. Something like that.

09:20:51 5 Q. What job did you have after the termination of
6 your job at the warehouse?

7 A. I went to work -- Are you through?

8 Q. Yes.

9 A. I went to work with the automotive garage.

09:21:06 10 Q. What did you do for the automotive garage?

11 A. I went after parts.

12 Q. What was the name of that employer?

13 A. I don't recall.

14 Q. What years or year were you employed in that
09:21:24 15 position?

16 A. I don't -- I don't remember exactly what
17 years it was.

18 Q. Do you know what decade it was in?

19 A. I think it was in the eighties.

09:21:42 20 Q. Okay. When you say you went after parts,
21 would I be accurate in assuming that you went from the
22 automotive garage to whatever wholesalers were out there
23 to get various parts that were necessary to put on cars
24 that were being repaired?

09:21:59 25 A. Yes.

1 Q. So you had interaction with wholesalers in
2 terms of transacting business for the sale of parts from
3 those wholesalers to this automotive garage you worked
4 for?

09:22:08 5 A. Yeah. Yes.

6 Q. So you were involved in the business
7 transactions between your automotive garage and the
8 wholesalers where parts were being purchased, correct?

9 A. No, that's not correct. I wasn't involved in
09:22:22 10 the business. I went to get the parts, and I delivered
11 them to the, to the garage. And what happened between
12 those, I don't know. I wasn't involved in the business.
13 I didn't collect any money. Is that what you mean?

14 Q. I'm just trying to find out what you actually
09:22:41 15 did and what your responsibilities were.

16 A. I went and got parts from the wholesaler and
17 took them over to the shop. And what became of them
18 after that, I assumed they went into the vehicles.

19 Q. Did you have any paperwork that you had to
09:22:51 20 deal with when you were performing those tasks?

21 A. No.

22 Q. You didn't have a list of parts --

23 A. Oh, yeah.

24 Q. -- you needed to go collect?

09:22:58 25 A. Yes, I did.

1 Q. Okay. Describe the paperwork that you dealt
2 with on a daily basis in your position.

3 A. It would have been an eight and a half by 11
4 sheet of paper with parts on it. They'd call it in
09:23:13 5 before I go and I'd take it over and they'd check it off
6 and I'd bring them back.

7 Q. When you say they called it in, someone from
8 the automotive garage you worked for would call whatever
9 wholesaler it was you were to go to to get the order,
09:23:27 10 whatever parts that were needed, and you were the person
11 responsible to go get the part and bring it back?

12 A. Yes, I was.

13 Q. And the sole items of documentation that you
14 dealt with was the list of parts that you were required
09:23:40 15 to pick up; is that accurate?

16 A. Yes.

17 Q. Was there any other documentation that you
18 routinely dealt with in your position with the automotive
19 garage you worked at?

09:23:48 20 A. It was hardly a position. It was more like a
21 part-time job. But, no.

22 Q. Okay. Now, you indicated that you worked
23 for -- Strike that.

24 You indicated that you sold real estate at
09:23:59 25 some point in time; is that correct?

1 A. Yes, uh-huh.

2 Q. When did you sell real estate?

3 A. Well, I started in Sun City, and I was down, I
4 guess about, oh, six or eight months, and then I -- then
09:24:18 5 I went to work for the -- for the post office. Then when
6 we moved up here, I sold real estate then.

7 Q. When you're selling real estate in Sun City,
8 who did you sell real estate for? Or strike that.

9 A. Century 21. Oh, sorry.

09:24:35 10 Q. Let's step back. I'm assuming if you sold
11 real estate that you had to go to school and get a real
12 estate license; is that accurate?

13 A. Yes.

14 Q. Where did you go to school to entitle you to
09:24:51 15 sit for the real estate exam?

16 A. I believe it was the Arizona School of Real
17 Estate. I believe.

18 I don't remember exactly, but . . .

19 Q. Where was the location of that school?

09:24:58 20 A. It was in Scottsdale.

21 Q. When did you go to school at the Scottsdale
22 location for the Arizona School of Real Estate?

23 A. I think it was in the eighties.

24 Q. That was subsequent to the time you worked at
09:25:23 25 the automotive garage, correct?

1 A. Yes.

2 Q. How long -- Strike that.

3 What was the duration of your schooling at the
4 Arizona School of Real Estate in Scottsdale?

09:25:33 5 A. I think it's a month or -- A month sounds
6 good. Two months? I don't recall. You know, let me
7 tell you, if I may interject something here. I have a
8 calendar at home I put all the children's birthdays, all
9 the anniversaries and all this to keep it up. I'm not
09:25:55 10 very good with dates. Every month I look at my calendar
11 and see what's coming up.

12 If you're going to ask me a lot of dates as to
13 when and what, I'm going to say a lot of I don't know,
14 because I won't -- don't remember dates well. I'm sorry,
09:26:08 15 you know, but I don't. So, but okay.

16 MR. ADAMS: Okay. Now, would you please
17 read my last question?

18 (Whereupon, the previous question was read
19 back by the court reporter.)

09:26:29 20 THE WITNESS: Oh, I see. Okay. I think
21 it's -- I think it was two months.

22 Q. (Continued by MR. ADAMS) Okay. Now, during
23 your time at the Scottsdale location for the Arizona
24 School of Real Estate, what courses did you take?

09:26:51 25 A. In essence, they taught the exam. That's what

1 they taught you, what you need to do to pass the real
2 estate examination.

3 Q. What did that entail?

4 A. I think they had some on contract writing.

09:27:42 5 Just general real estate information.

6 Q. Did they teach you anything about how to
7 engage in proper sales conduct?

8 MS. KIRK: Object as to form.

9 THE WITNESS: I would imagine they did. I
09:28:04 10 don't recall specifically, but I'm sure they did.

11 Q. (Continued by MR. ADAMS) Did they give you
12 any instruction on what you were not allowed to do as a
13 licensed real estate sales person?

14 A. Not allowed to do? What do you mean exactly?

09:28:29 15 Q. Things that a real estate agent is not
16 supposed to do in connection with selling real estate, or
17 buying real estate, or finding real estate to purchase or
18 sell.

19 A. I'm sure that was covered in the, in the
09:28:47 20 course.

21 Q. Okay. What I am trying to find out is what
22 did you learn at the Arizona Department of Real Estate?

23 A. Well, I learned enough to pass the test.

24 Q. Okay. Well, that's rather non-descriptive.
09:29:03 25 I'd like some specifics as to what you were taught.

1 A. I'm sure you would, and I'd like to furnish
2 them. But I don't recall exactly what they taught me at
3 that school. I'm sorry.

4 Q. Did they talk about real estate commissions
09:29:16 5 during the school?

6 A. No, I don't believe they did.

7 Q. So you have no recollection of anything that
8 you learned during your time at the Arizona Department of
9 Real Estate School?

09:29:30 10 MS. KIRK: Object as to form.

11 THE WITNESS: No, that's not true. I
12 remember some of the things they taught. They taught,
13 you know, how to write contracts and -- Hmmm. Well,
14 that's about all I can remember right now, what we've
09:30:12 15 already touched on.

16 Q. (Continued by MR. ADAMS) So the only thing
17 you can remember from two full months of course work at
18 the Arizona Department of Real Estate School is how to
19 write contracts; is that accurate?

09:30:23 20 MS. KIRK: Object as to form.

21 THE WITNESS: I think they had some
22 courses on real estate law. Yep. That's it. I can't,
23 you know, you're --

24 Q. (Continued by MR. ADAMS) What did they teach
09:30:53 25 you with respect to real estate law?

1 A. I can't remember specifically what they
2 taught. You know, that's been quite some time ago, and I
3 don't remember.

4 Q. Now, I believe you testified, and this is
09:31:18 5 merely a summary of what your testimony was --

6 A. Yeah.

7 Q. -- but I believe you testified that they
8 taught you the real estate exam. Was that your
9 testimony?

09:31:27 10 A. That's -- Yes, pretty much. You know, they
11 taught what you needed to pass the exam, that's correct.

12 Q. Okay. What did you need to know to pass the
13 real estate exam?

14 A. You know, you've asked me this now several
09:31:48 15 times about what I remember, and I've told you the best I
16 can. Now, I don't know. I don't remember anymore. If
17 you want to keep asking that question, please do, but I'm
18 going to tell you, I don't -- That's what I remember, is
19 what I've said, and, you know, I keep answering the same
09:32:06 20 question over and over again. Or I don't know exactly
21 what you're looking for. I've done my best on this.

22 Now, you know, I've sworn to tell the truth. I'm not
23 going to make up things to tell you that I learned there
24 that I remember, because I've told you what I know.

09:32:24 25 Q. Which were what questions if you can recall?

1 What types of questions were asked on the Arizona real
2 estate exam?

3 MS. KIRK: Object as to form.

4 THE WITNESS: I don't remember.

09:32:39 5 Q. (Continued by MR. ADAMS) When did you take
6 the Arizona real estate exam?

7 A. Sometime in the eighties.

8 Q. If you could tell me, could you recall which
9 president was in office at the time you took the Arizona
09:32:56 10 real estate exam?

11 A. No.

12 Q. Am I to assume you passed the Arizona real
13 estate exam?

14 A. Yes.

09:33:07 15 Q. How long did the exam take you to take?

16 MS. KIRK: Object as to form.

17 THE WITNESS: It was about a four-hour
18 test.

19 Q. (Continued by MR. ADAMS) Can you recall
09:33:17 20 anything that was tested during this four-hour exam?

21 A. No. If I knew it was going to be important, I
22 would have taken notes. I don't remember what questions
23 were asked.

24 Q. Okay. So let me just get a brief summary
09:33:50 25 here. You went to Phoenix College at some point in time,

1 but you can't remember when. You can't remember taking
2 any of the course work there, other than some accounting
3 courses. Your attendance at Phoenix College lasted
4 approximately three months, but you did not finish the
09:34:10 5 course work --

6 A. That's correct.

7 Q. -- for a full semester. At some point in time
8 you went to the real estate school at their location in
9 Scottsdale, but you don't have any recollection of any
09:34:16 10 course work or subjects that you really studied, with the
11 exception of something dealing with contract writing and
12 real estate law. You took a four-hour exam following
13 your time at the Arizona Real Estate School, and you
14 can't recall anything that was actually tested on that
09:34:34 15 exam. Is that an accurate summary?

16 MS. KIRK: Object as to form.

17 THE WITNESS: Yeah. I don't remember.
18 That's -- I can't recall.

19 Q. (Continued by MR. ADAMS) After you passed the
09:34:49 20 Arizona real estate exam, you sold real estate, correct?

21 A. Yes.

22 Q. Who did you sell -- Which real estate company
23 did you work for when you were selling real estate?

24 A. I worked for Century 21 in Sun City. I worked
09:35:04 25 for Desert Sierra Realty, up here in Prescott Valley, and

1 Far West Realty. That's it.

2 Q. The Century 21, in Sun City, where you sold
3 real estate --

4 A. Um-hum.

09:35:21 5 Q. -- which office were you working out of?

6 A. The Sun City office.

7 Q. Is there only one Century 21 office?

8 A. There was at that time.

9 Q. Where was that office located?

09:35:30 10 A. You mean the address?

11 Q. Yes.

12 A. I don't remember the address. It was in Sun
13 City.

14 Q. Do you recall any cross-streets?

09:35:41 15 A. No, I don't.

16 Q. Who was your broker when you were working in
17 Sun City?

18 A. Some lady. I don't recall her name.

19 Q. What years were you a real estate agent in Sun
09:36:03 20 City?

21 A. It was -- Well, I remember it was -- It was
22 in the eighties. It was just before we moved up here,
23 so . . .

24 Q. Approximately how many real estate
09:36:48 25 transactions were you involved in when you were employed

1 as a real estate agent with Century 21 in Sun City,
2 Arizona?

3 A. I think it was about three.

4 Q. With respect to those three transactions, were
09:37:01 5 you a seller's agent or a buyer's agent or a dual agent?

6 A. I was the buyer's agent for that.

7 Q. For all three?

8 A. Yes.

9 Q. Would you consider the real estate
09:37:20 10 transactions that you were involved in in Sun City to be
11 business transactions?

12 A. Yes.

13 Q. Now, after you left your employment as a real
14 estate agent in Sun City, you relocated here --

09:37:29 15 A. Yes.

16 Q. -- to Prescott Valley --

17 A. Um-hum.

18 Q. -- to your Coyote Springs Ranch property; is
19 that accurate?

09:37:36 20 A. Yes.

21 Q. And you went to work for another real estate
22 company. I can't remember what the name of it was.

23 A. Desert Sierra.

24 Q. Would you spell Desert Sierra for me, please?

09:37:48 25 A. D-E-S-E-R-T. S-I-E-A-R-R-A; is that Sierra?

1 Q. Who was your broker with?

2 A. Tony Terrassi.

3 Q. What year was that when you first went to work
4 for Desert Sierra?

09:38:18 5 A. Well, it was the first year we lived, we came
6 up here, so it was 16 years ago. Can you do the math on
7 that, and --

8 Q. Well, that's fine. That gives me a reference.
9 That's okay.

09:38:29 10 A. Okay. Thank you.

11 Q. How long were you employed with Desert Sierra
12 Realty?

13 A. Five years.

14 Q. In the five years you were at Desert Sierra
09:38:39 15 Realty, approximately how many real estate transactions
16 were you involved in?

17 MS. KIRK: Object as to form.

18 THE WITNESS: I'm not sure. It was quite
19 a few, but I don't remember exactly how many.

09:38:52 20 Q. (Continued by MR. ADAMS) More than five?

21 A. Oh, yes.

22 Q. Would there have been more than 10?

23 A. Yeah.

24 Q. More than 20?

09:38:59 25 A. Probably.

1 Q. More than 100?

2 A. No.

3 Q. More than 50?

4 A. Possibly, but -- No, I doubt it, but --

09:39:15 5 Q. If you could just give me your best ballpark
6 figure for how many real estate transactions you were
7 involved in as a real estate agent?

8 A. A guess you mean?

9 Q. Sure.

09:39:25 10 A. 35.

11 Q. You would consider all 35 of those real estate
12 transactions to have been business and commercial
13 transactions, wouldn't you?

14 MS. KIRK: Object as to form.

09:39:33 15 THE WITNESS: Would you repeat that? I
16 didn't quite get all that.

17 MR. ADAMS: Would you repeat that please?

18 (Whereupon, the previous question was read
19 back by the court reporter.)

09:39:53 20 MS. KIRK: Same objection.

21 THE WITNESS: Yes.

22 Q. (Continued by MR. ADAMS) Why would you
23 characterize those as business transactions?

24 A. Well, selling real estate is a business, and
09:40:09 25 it's a transaction within the business.

1 Q. Why do you consider selling real estate to be
2 a business?

3 A. Well, that's regulated by the State, and it's
4 always -- it's referred to as a business.

09:40:32 5 Q. Is there any other criteria that you think
6 qualifies it as a business activity?

7 A. I don't know what you're looking for here.
8 You know, I said that it's a business.

9 Q. I would like to know why you think it's a
09:40:55 10 business.

11 A. Because they sell -- You know, they sell real
12 estate. It's a real estate business. They sell real
13 estate. That makes it -- What else can I say?

14 Q. Is there anything, other than just that they
09:41:12 15 sell real estate, that makes it a business?

16 MS. KIRK: Object as to form.

17 THE WITNESS: I don't know. I don't know
18 what you, what you want me to say. I've already -- I
19 keep answering this. You know, they sell real estate.
09:41:28 20 It's a real estate business, so it's a business. What,
21 what -- I don't know exactly what you're after.

22 Q. (Continued by MR. ADAMS) I would like to know
23 what your criteria would be for establishing that selling
24 real estate is a business.

09:41:45 25 A. Well, they -- Let's see. They sell real

1 estate and they collect commissions.

2 Q. After you left Desert Sierra, you went to work
3 for --

4 A. Far West.

09:42:07 5 Q. Far West Realty?

6 A. Yes.

7 Q. Approximately what year did you leave Desert
8 Sierra and go to work for Far West?

9 MS. KIRK: Object as to form.

09:42:16 10 THE WITNESS: Well, I worked for Desert
11 Sierra for five years, and then I went to work for Far
12 West.

13 Q. Who was the broker at Far West Realty?

14 A. Jim Steverson, S-T-E-V-E-R-S-O-N.

09:42:46 15 Q. How long were you with Far West Realty?

16 A. About five years.

17 Q. Approximately how many real estate
18 transactions were you involved in with Far West Realty?

19 MS. KIRK: Object as to form.

09:43:11 20 THE WITNESS: Maybe as many as 100.

21 Q. (Continued by MR. ADAMS) And as with the 35
22 transactions, or I should say as with the approximate 35
23 transactions that you were involved with at Desert
24 Sierra, would you consider the 100 transactions or the
09:43:26 25 approximate 100 transactions with Far West Realty to have

1 been business transactions?

2 A. Yes.

3 Q. So do you recall approximately when you
4 retired from Far West Realty?

09:43:58 5 A. When I was 62 years old. I'm 69 years old
6 now. Seven years ago.

7 Q. Okay. Would that have been when you went to
8 work for the post office?

9 MS. KIRK: Objection.

09:44:18 10 THE WITNESS: No. I went to work for the
11 post office after I went from Sun City, at Sun City.
12 Then I went to work for the post office.

13 Q. (Continued by MR. ADAMS) Where was this post
14 office that you worked at?

09:44:36 15 A. Peoria.

16 Q. What did you do for the post office in Peoria?

17 A. I delivered mail.

18 Q. Did you drive a mail truck when you did that?

19 A. I was a rural carrier. I drove my own
09:45:07 20 vehicle.

21 Q. Were you ever involved in the office where
22 they take packages and letters and sell --

23 A. No.

24 Q. -- postage --

09:45:23 25 A. No.

1 Q. -- and things like that? How long were you in
2 your position as a mail carrier?

3 A. Not very long. I'd say just a couple of
4 months.

09:45:30 5 Q. Do you recall approximately the time frame
6 when you were a mail carrier?

7 A. It was -- it was after -- after I --
8 It was after I sold real estate in Sun City.

9 Q. And I'm sorry. I've forgotten. You said you
09:46:01 10 were in that position as a mail carrier approximately
11 six months; is that accurate?

12 A. No.

13 Q. How long?

14 A. Probably just a month.

09:46:08 15 Q. Since you've retired from your position as a
16 real estate sales person, have you engaged in any
17 business or commercial transactions --

18 MS. KIRK: Objection.

19 Q. (Continued by MR. ADAMS) -- as a
09:46:21 20 professional?

21 MS. KIRK: Object as to form.

22 THE WITNESS: No.

23 Q. (Continued by MR. ADAMS) You've not had any
24 employment positions during that time; is that accurate?

09:46:32 25 A. That's -- That's right.

1 MS. KIRK: Object as to form.

2 THE WITNESS: I don't know at this time.
3 I don't know.

4 Q. (Continued by MR. ADAMS) That would be a
10:05:33 5 violation of the Declaration of Restrictions, though,
6 wouldn't it?

7 A. Yes, it would.

8 Q. Okay. But you don't know if you would sue
9 those parties then, correct?

10:05:52 10 MS. KIRK: Object as to form.

11 THE WITNESS: That is correct, I don't
12 know.

13 Q. (Continued by MR. ADAMS) Is there any reason
14 why you would not?

10:06:00 15 MS. KIRK: Object as to form.

16 THE WITNESS: Lawsuits cost a lot of
17 money, you know, and that's the -- I don't know whether I
18 would sue them or not. I don't know.

19 Q. (Continued by MR. ADAMS) Are you aware of any
10:06:45 20 properties in the portion of Coyote Springs Ranch where
21 you live that are currently violating any provision of
22 the Declaration of Restrictions?

23 A. I don't know of any, you know, without -- No,
24 I don't know of any, other than the, other than the tree
10:07:33 25 farm.

1 Q. Well, you've alleged that my clients have
2 violated paragraph two of the Declaration of
3 Restrictions, correct?

4 A. Yes.

10:07:41 5 Q. Are you aware of any other property owners in
6 the portion of Coyote Springs Ranch, where you live, that
7 are violating that provision as well?

8 A. I haven't seen any.

9 Q. Are you aware of any?

10:07:56 10 A. I've heard some -- They had a list, and I
11 looked at it, but I don't know if it's, if it's true or
12 not.

13 Q. Do you know who Curtis Kincheloe is?

14 A. No.

10:08:14 15 Q. Have you ever seen or observed an automotive
16 repair shop in your portion of Coyote Springs Ranch?

17 A. No.

18 Q. Weir Stables is located near you, isn't it?

19 A. Yes.

10:08:39 20 Q. That's a business activity, isn't it?

21 MS. KIRK: Object as to form.

22 THE WITNESS: Well, ever since I moved in,
23 it was -- I always thought it was a rich man's hobby.
24 That's -- I didn't know that horse racing was actually a
10:08:56 25 business.

1 Q. (Continued by MR. ADAMS) Do they do it for
2 free, as far as you know?

3 A. I don't know. I know they train horses there,
4 but I don't know what they do outside of that.

10:09:05 5 Q. Would you consider training horses in exchange
6 for money to be a business transaction?

7 A. I'm not sure. I'm just not sure whether that
8 would be a -- I don't know if they are doing that. I
9 don't know.

10:09:29 10 Q. I'm asking you if you would consider training
11 horses in exchange for money to be a business
12 transaction.

13 A. I don't know.

14 Q. Would cutting hair in exchange for money be a
10:09:42 15 business transaction?

16 A. I'm not -- You know, I'm not sure exactly
17 what you're getting at here. Cutting hair a business
18 transaction? I -- No.

19 Q. That's not a business activity?

10:10:07 20 A. Not a business transaction.

21 Q. Okay. So you go to a barber, correct?

22 A. Yeah.

23 Q. Okay. And does your barber cut your hair for
24 free?

10:10:16 25 A. No.

1 Q. Why does he cut your hair?

2 A. That's how he makes his living.

3 Q. Why does he cut your hair?

4 A. For money.

10:10:23 5 Q. Would you consider cutting hair for money to
6 be a business activity?

7 A. Yes.

8 Q. Okay. So why, then, would you not consider
9 training horses in exchange for money to be a business
10:10:43 10 activity?

11 A. Okay. Training horses for money. Would that
12 be a business activity?

13 Q. You would agree with that?

14 A. Yes, I would agree.

10:11:09 15 Q. Okay.

16 A. That if you train horses for money, it's a
17 business activity, yes.

18 Q. How about boarding horses in exchange for
19 money; would you consider that to be a business activity?

10:11:18 20 A. Yes.

21 Q. Repairing cars for money, would you consider
22 that to be a business activity?

23 A. I think -- Some of that has to do with the
24 scale. I mean, if somebody fixed my car, and I, you
10:11:42 25 know, and I gave him, you know, some money, I don't think

1 that would be a business, but if they're licensed and
2 they have an ongoing business, then, yeah, it would be.

3 Q. So what would your threshold be for the dollar
4 amount that would change something from being a
10:12:07 5 nonbusiness activity to something being a business
6 activity?

7 MS. KIRK: Object as to form.

8 THE WITNESS: Well, whatever the small --
9 if there are some of these small operations. I'm not
10:12:36 10 sure if there is. Evidently -- I'm not sure if there
11 are any small businesses going on out there or not. I've
12 never seen any. But it can't compare to people got a
13 thousand trees over there and they got trucks coming and
14 going and it's right across the street from me. You
10:12:54 15 ask -- That's what I'm concerned with is that specific
16 one.

17 Q. (Continued by MR. ADAMS) Okay. You agreed
18 that training horses is a business activity, correct?

19 MS. KIRK: Object as to form.

10:13:13 20 THE WITNESS: Yes.

21 Q. (Continued by MR. ADAMS) And boarding horses
22 in exchange for money is a business activity, correct?

23 A. Well, not if someone -- you know, had two or
24 three horses and they were, and someone was, you know,
10:13:30 25 paying for the hay or paying them for the, you know, for

1 cleaning the stalls or something like that. That's
2 certainly not a business in my estimation.

3 Q. So would you -- Strike that.

4 Would it be your opinion, then, that the fewer
10:13:49 5 the transactions, the less likely it is that a business
6 activity is occurring?

7 MS. KIRK: Object as to form.

8 THE WITNESS: I just don't think that if
9 someone has got a -- you know, if somebody is building
10:14:13 10 birdhouses in his garage to sell at the craft fair, that
11 that's a business. You know, I heard you read out of the
12 dictionary, you know, the business thing, but I don't, I
13 don't consider that a business, no. It's small,
14 something small like that. It doesn't --

10:14:30 15 Q. (Continued by MR. ADAMS) Let's go to
16 paragraph three of the Declaration of Restrictions --
17 Strike that. Paragraph two of the Declaration of
18 Restrictions --

19 A. Yeah.

10:14:37 20 Q. -- which is Exhibit No. One.

21 A. Yeah.

22 Q. Do you see anything in paragraph number two
23 that places a limitation on either the size of the
24 business activity or the dollar amount of the business
10:14:47 25 transactions?

1 A. No.

2 Q. It just says, "No trade, business, profession
3 or any other type of commercial or industrial activity
4 shall be initiated or maintained within said property or
10:15:03 5 any portion thereof," correct?

6 A. Um-hum.

7 Q. I have read that accurately?

8 A. Yes, you did.

9 Q. There are no limitations placed on the size of
10:15:12 10 the activities that can occur in Coyote Springs Ranch,
11 are there?

12 A. No.

13 Q. So, then, it wouldn't matter whether someone
14 is selling one item or many; it would be a business
10:15:23 15 activity, if there is a sales transaction occurring,
16 correct?

17 A. It would matter to me.

18 Q. But under the Declaration of Restrictions, it
19 would be considered to be a business activity, correct?

10:15:33 20 MS. KIRK: Object as to form.

21 THE WITNESS: Yes.

22 Q. (Continued by MR. ADAMS) Okay. Would you
23 agree that the growing of trees for Christmas tree sales
24 would be a business activity?

10:15:54 25 A. Yes.

1 Q. Would you agree that the harvesting of wool
2 from llamas, alpacas or sheep for sale to the general
3 public would be a business activity?

4 A. I haven't seen any truckloads of wool going up
10:16:22 5 and down Coyote Springs, but I suppose if you're
6 harvesting wool and selling it, I suppose that would be a
7 business activity, yeah, uh-huh, if --

8 Q. Do you consider the Salvation Army to be a
9 business?

10:17:01 10 MS. KIRK: Object as to form.

11 THE WITNESS: No, I don't.

12 Q. (Continued by MR. ADAMS) So the store --
13 Strike that.

14 Do you know where the Salvation Army store is
10:17:12 15 in downtown Prescott?

16 A. Yes.

17 Q. It's down on Montezuma; is that your
18 recollection?

19 A. Yes, I think so.

10:17:24 20 Q. Okay. Have you ever been in that store?

21 A. No.

22 Q. You're aware that they sell items of clothing
23 and other things there, correct?

24 A. I've been in other Salvation Army stores, yes,
10:17:33 25 sir.

1 Q. Do they give the stuff away for free,
2 generally?

3 A. No.

4 Q. People who want stuff from the Salvation Army
10:17:45 5 in those stores have to pay for it, correct?

6 A. Yes.

7 Q. So were those business transactions that were
8 occurring at the Salvation Army?

9 MS. KIRK: Object as to form.

10:17:59 10 THE WITNESS: I don't know. They require
11 it's a charitable enterprise. I'm not sure if they even
12 require a business license. I -- it's a -- It would
13 seem more like a humanitarian effort than a business.

14 Q. (Continued by MR. ADAMS) So you can't be a
10:18:17 15 humanitarian organization and be a business at the same
16 time, in your opinion?

17 MS. KIRK: Object as to form.

18 THE WITNESS: Well, I've never considered
19 Salvation Army to be a business. And I don't now.

10:18:40 20 Q. (Continued by MR. ADAMS) Would you consider
21 the transactions that are occurring in the Salvation Army
22 store to be business transactions?

23 A. No.

24 Q. Even though that money is exchanging hands?

10:18:50 25 A. That's right.

1 that business activity, isn't there?

2 A. Um-hum.

3 MS. KIRK: Object as to form.

4 Q. (Continued by MR. ADAMS) So would that be a
11:06:14 5 violation of paragraph eight of the Declaration of
6 Restrictions?

7 MS. KIRK: Object as to form.

8 THE WITNESS: Yes, um-hum.

9 Q. (Continued by MR. ADAMS) Okay. When you were
11:06:33 10 a real estate agent, did you ever advertise in the phone
11 book?

12 MS. KIRK: Object as to form.

13 THE WITNESS: No, my company did.

14 Q. (Continued by MR. ADAMS) Okay. Why did --
11:06:44 15 And strike that.

16 Do you have an opinion regarding why your
17 company would have advertised in the phone book?

18 A. To attract business.

19 Q. Okay. I've handed you what has been marked as
11:07:04 20 Exhibit No. 7. Would I be accurate in stating that what
21 appears to be on Exhibit No. 7 is something taken from
22 the Qwest Dex phone book?

23 MS. KIRK: Object as to foundation.

24 THE WITNESS: Yeah, I think so. It says Q
11:07:28 25 West up there, um-hum.

1 Q. (Continued by MR. ADAMS) It appears to be
2 telephone advertising for businesses, correct?

3 A. Yes.

4 Q. And down below, it identifies horse breeders,
11:07:41 5 correct?

6 A. Um-hum.

7 Q. And then down below that, it has Weir Stables
8 at 8400 East Kelly Road, correct?

9 A. Um-hum. Yes.

11:07:51 10 Q. Kelly Road is located in Coyote Springs Ranch,
11 isn't it?

12 A. Yes.

13 Q. In fact, you know where Weir Stables is, don't
14 you?

11:07:59 15 A. Yes.

16 Q. Because they're located close to your
17 property, correct?

18 A. Yes, that's correct.

19 Q. Have you ever heard of Double Eagle
11:08:06 20 Performance Horses?

21 A. No.

22 Q. Okay. Do you know Karen Wells?

23 A. No.

24 Q. But at least what's being advertised as Double
11:08:17 25 Eagle Performance Horses is in the horse breeder section

1 of the Yellow Pages, correct?

2 A. Yes. I'm going to have to take a break.

3 Sorry. It's time.

4 MR. ADAMS: That's fine.

5 (Whereupon, a recess was had.)

6 Q. (Continued by MR. ADAMS) Mr. Cundiff, I'd
7 like to go back to Exhibit No. 7, for a moment, if you
8 would please. Would you agree that if Double Eagle
9 Performance Horses is being operated at a property
10 located within the portion of Coyote Springs Ranch where
11 your property is located, that it's conducting a business
12 activity?

13 MS. KIRK: Object as to form.

14 THE WITNESS: I don't know what they're
11:11:13 15 doing. They're in the phone book, but -- I can't testify
16 that they're conducting business. I don't know what
17 they're doing.

18 Q. (Continued by MR. ADAMS) Okay. If they're
19 training or boarding horses in the portion of Coyote
11:11:22 20 Springs Ranch where your property is located and they're
21 doing those activities in exchange for money, you would
22 agree that those activities are in violation of the
23 Declaration of Restrictions, correct?

24 A. Yes.

11:11:32 25 MS. KIRK: Object as to form.

1 MS. KIRK: Object.

2 THE WITNESS: Not exactly. I've seen it.
3 I've seen it on the map, I think, maybe. I don't know.
4 I know there is a Faraway Place down there somewhere.

11:17:42 5 Q. (Continued by MR. ADAMS) You do know that
6 that's located in Coyote Springs Ranch, correct?

7 A. Yes, I do. Um-hum.

8 Q. I've handed you what has been marked as
9 Exhibit No. 9, which appears to be a business card,
11:17:55 10 correct?

11 MS. KIRK: Object as to form.

12 THE WITNESS: Yes.

13 Q. (Continued by MR. ADAMS) In your view, does
14 it appear to be a business card?

11:18:02 15 A. Yes.

16 Q. Okay. Down at the very bottom there are some
17 lettering that has an L-I-C, period, and an ampersand and
18 then an I-N-S, period. In your opinion, what do you
19 believe that indicates?

11:18:21 20 A. Oh, licensed and insured --

21 Q. Okay.

22 A. -- I guess.

23 Q. What, to you, does that mean, when somebody
24 puts that kind of language on a business card?

11:18:34 25 MS. KIRK: Object as to form.

1 THE WITNESS: That they have a -- I would
2 believe they'd be saying that they're licensed and
3 insured.

4 Q. (Continued by MR. ADAMS) Why would that be
11:18:46 5 important to you as a consumer?

6 MS. KIRK: Object as to form.

7 THE WITNESS: Why would it be important to
8 me as a consumer? You know, until you brought it up,
9 I've never even thought about it.

11:19:02 10 Q. (Continued by MR. ADAMS) Okay. Let me ask
11 you this: What kind of activities do you believe are
12 being advertised on the business card shown on Exhibit
13 No. 9?

14 A. Automotive, hail and door ding repair.

11:19:17 15 Q. So what kind of services do you believe you
16 could expect to receive at 8750 East Faraway Place in
17 Prescott Valley, Arizona?

18 MS. KIRK: Object as to form and
19 foundation.

11:19:29 20 THE WITNESS: What would I expect to
21 receive?

22 Q. (Continued by MR. ADAMS) Right.

23 A. According to this and according to the card?

24 Q. Yes.

11:19:36 25 A. Well, if the card is accurate, I would expect

1 to have paintless dent repair.

2 Q. Okay. And what types of products would be
3 repaired, based upon the business card shown on
4 Exhibit 9?

11:19:51 5 A. Automotive, an automobile.

6 Q. Okay. Would you expect to get -- Strike
7 that.

8 If you were to take your vehicle there, having
9 received the business card identified as Exhibit No. 9,
11:20:12 10 would you expect to receive whatever services were
11 rendered for free?

12 MS. KIRK: Object as to form and
13 foundation.

14 THE WITNESS: No.

11:20:23 15 Q. (Continued by MR. ADAMS) You would expect to
16 pay for them, correct?

17 A. Yeah, if you -- you know, if -- If this is a
18 legitimate business card and that's -- I would expect to,
19 yes, uh-huh, I would expect to pay.

11:20:41 20 Q. Based upon the business card identified on
21 Exhibit No. 9, in your opinion, do you think the business
22 activities are taking place at 8750 East Faraway Place,
23 Prescott Valley, Arizona?

24 A. If you can believe the business card, yes.

11:21:00 25 Q. Okay. And if 8750 East Faraway Place in

1 Prescott Valley, Arizona is located within the portion of
2 Coyote Springs Ranch where your property is located,
3 would it then be a violation of paragraph two of the
4 Declaration of Restrictions?

11:21:15 5 MS. KIRK: Object as to form.

6 THE WITNESS: Yes.

7 Q. (Continued by MR. ADAMS) Do you now believe
8 that there are more than just the Coxes conducting --
9 Strike that.

11:21:31 10 Do you believe that there are properties in
11 Coyote Springs Ranch where business activities are being
12 conducted, other than those activities that you allege
13 are occurring on Mr. and Mrs. Coxes' property?

14 MS. KIRK: Object as to form.

11:21:46 15 THE WITNESS: I haven't personally
16 observed any businesses out there. We have business
17 cards and pictures of signs, but I haven't personally
18 observed any.

19 Q. (Continued by MR. ADAMS) That wasn't my
11:22:04 20 question, Mr. Cundiff.

21 A. Okay. What was it?

22 Q. Based on what you've seen today, do you have
23 an opinion as to whether there are properties out in
24 Coyote Springs Ranch where business activities are being
11:22:13 25 conducted exclusive of what you've alleged is being

1 conducted on my clients' property?

2 MS. KIRK: Object as to form and
3 foundation.

4 THE WITNESS: Yes, I would think that
11:22:31 5 there's probably some businesses out there, yes.

6 Q. (Continued by MR. ADAMS) Okay. Do you know
7 where 8815 East Spurr Lane is?

8 A. No, I know where Spurr Lane is. I think it's
9 out close to the end there or something.

11:22:54 10 Q. I've handed you what has been marked as
11 Exhibit No. 11. On the right-hand side, would you agree
12 that there appears to be a business card shown there?

13 A. Yes.

14 Q. Would you agree that that's advertising some
11:23:24 15 type of business?

16 A. Yes.

17 Q. And would you agree that the location for the
18 business shown on the business card is 8950 East Mummy
19 View Drive, Prescott Valley, Arizona?

11:23:33 20 MS. KIRK: Objection. Foundation.

21 THE WITNESS: Would I agree? Yeah. 8950
22 East Mummy View Drive, yes, Prescott Valley, yes, uh-huh.

23 Q. (Continued by MR. ADAMS) Based upon your
24 review of the business card shown on Exhibit No. 11, you
11:23:47 25 would agree that whatever business is being advertised is

1 located at 8950 East Mummy View Drive, Prescott Valley,
2 Arizona?

3 MS. KIRK: Objection. Foundation.

4 THE WITNESS: I don't want to be
11:23:57 5 difficult, but I want you to repeat that question.

6 Q. (Continued by MR. ADAMS) I'll use -- I'll
7 move on.

8 A. Thank you.

9 Q. If you were to drive to 8950 East Mummy View
11:24:08 10 Drive, Prescott Valley, Arizona based upon what you see
11 on the business card shown on Exhibit No. 11, what would
12 you expect to find being done at that location?

13 A. If you can believe the business card, it would
14 be auto repair.

11:24:28 15 Q. Down to the right-hand side of the business
16 card shown on Exhibit No. 11.

17 A. Uh-huh.

18 Q. It says certified, and then has a little
19 squiggly line, and then says licensed, correct?

11:24:43 20 A. Um-hum.

21 Q. Correct?

22 A. Yes.

23 Q. What does that language mean to you -- Strike
24 that.

11:24:49 25 What would that language mean to you in the

1 event you were requiring some repairs to your automobile?

2 A. Well, it -- That he was trying to tell us
3 that he is certified in some manner - I don't know what
4 his certification is - and that he is licensed in some
11:25:08 5 manner - I don't know what the license would be.

6 Q. Why did you obtain a real estate license?

7 A. To satisfy the legal requirements of being
8 able to sell real estate.

9 Q. Okay. So would you believe that based upon
11:25:21 10 the business card that you received, that Curtis
11 Kincheloe has a license to conduct whatever business he's
12 conducting?

13 MS. KIRK: Objection as to --

14 THE WITNESS: It says that on his card.

11:25:38 15 Q. (Continued by MR. ADAMS) Right.

16 A. However, I don't know if he has one or not.
17 But he's certainly advertising that he has one.

18 Q. Okay. And the purpose of -- Strike that.

19 To the left of the business card shown on
11:25:47 20 Exhibit No. 11, would you agree that it appears that
21 there is a garage located on that property?

22 MS. KIRK: Objection. Form and
23 foundation.

24 THE WITNESS: Well, there's certainly a
11:26:07 25 building. Which one do you think is the garage?

1 Q. (Continued by MR. ADAMS) Well, let me ask you
2 this: On the top photograph, on Exhibit No. 11 --

3 A. Yeah.

4 Q. -- do you see a large building with two large
11:26:20 5 white doors and then a small entry door?

6 A. On the right-hand side? Yeah.

7 Q. Okay. That doesn't look like a house or a
8 residential structure, does it?

9 A. Um --

11:26:32 10 MS. KIRK: Objection. Form.

11 THE WITNESS: It doesn't look like a
12 house, no.

13 Q. (Continued by MR. ADAMS) In your view, does
14 it appear to be a house?

11:26:40 15 A. No. No.

16 Q. What does it appear to be, based --

17 A. A garage.

18 Q. Okay. Do you know where 8250 Spurr Lane is in
19 Coyote Springs Ranch?

11:27:05 20 A. I know where Spurr Lane is. I don't know --

21 Q. Spurr Lane is in Coyote Springs Ranch; is that
22 correct?

23 A. Yes, it is.

24 Q. Okay. I've handed you what has been marked as
11:27:22 25 Exhibit No. 13. The first page appears to be a voided

1 check from a company called 2nd Chance Mobile Home
2 Transport Company.

3 A. Okay.

4 Q. With an address of 8250 Spurr Lane, Prescott
11:27:35 5 Valley, Arizona. Did I identify that item correctly?

6 A. Yes, um-hum.

7 Q. What business would you expect to find, based
8 upon looking at this voided check, at 8250 Spurr Lane --

9 MS. KIRK: Objection. Form and
11:27:54 10 foundation.

11 Q. (Continued by MR. ADAMS) -- Prescott Valley,
12 Arizona?

13 A. Oh.

14 Q. Just looking at the voided check, what
11:28:09 15 business would you expect to find if you had this check
16 in hand at 8250 Spurr Lane, Prescott Valley, Arizona?

17 MS. KIRK: Objection. Form and
18 foundation.

19 THE WITNESS: Well, it says 2nd Chance
11:28:27 20 Mobile Home Transport Company.

21 Q. (Continued by MR. ADAMS) If you'll turn to
22 the second page.

23 A. Okay.

24 Q. Would you please give me your opinion of what
11:28:35 25 that document appears to be?

1 MS. KIRK: Objection. Foundation.

2 THE WITNESS: Okay. It looks like an
3 invoice.

4 Q. (Continued by MR. ADAMS) Does it appear to be
11:29:09 5 an invoice for some type of services that have been
6 provided to Cavco, located in Litchfield, in Goodyear,
7 Arizona?

8 MS. KIRK: Objection. Form and
9 foundation.

11:29:25 10 THE WITNESS: Yeah, it looks like they
11 went there.

12 Q. (Continued by MR. ADAMS) Would you agree that
13 the customer identified on the right-hand side about, oh,
14 a third of the way down, it identifies a customer by the
11:29:41 15 name of C, period, Jimerson?

16 A. Yep.

17 MS. KIRK: Objection.

18 Q. (Continued by MR. ADAMS) And up above it
19 identifies 2nd Chance Mobile Home Transport Company with
11:29:48 20 the address at 8250 Spurr Lane, Prescott Valley, Arizona,
21 86314, correct?

22 A. Yes.

23 MS. KIRK: Objection. Form, foundation.

24 Q. (Continued by MR. ADAMS) Based upon your view
11:29:59 25 of the second page of Exhibit No. 13, which you've

1 identified as an invoice, does it appear that business is
2 being conducted at that location?

3 MS. KIRK: Objection. Form and
4 foundation.

11:30:10 5 THE WITNESS: It appears as if they're at
6 least taking phone calls there.

7 Q. (Continued by MR. ADAMS) What is the business
8 location identified as on the invoice, which is the
9 second page of Exhibit No. 13?

11:30:21 10 A. 82 --

11 MS. KIRK: Objection. Form and
12 foundation. Go ahead and answer it.

13 THE WITNESS: The address?

14 Q. (Continued by MR. ADAMS) Yes.

11:30:29 15 A. 8250 Spurr Lane, Prescott Valley.

16 Q. Okay. And that's what appears to be the
17 business address for the 2nd Chance Mobile Home Transport
18 Company, correct?

19 MS. KIRK: Objection. Form and
11:30:38 20 foundation.

21 THE WITNESS: Yes. Yes, it does.

22 Q. (Continued by MR. ADAMS) Okay. So if that's
23 the business location of that business, would you agree
24 that they're conducting business activities at that
11:30:46 25 location?

1 MS. KIRK: Objection. Form.

2 THE WITNESS: Not necessarily. They're
3 going somewhere and they're -- They went to Litchfield
4 Park, and Goodyear, and transported a mobile from -- the
11:31:06 5 origin was Litchfield, the Cavco, and they took it to
6 Hallmark Homes, Inc., Pueblo, Colorado, so I don't know
7 if they conducted any business on their property or not.

8 Q. (Continued by MR. ADAMS) Okay. So if the
9 actual activity takes place someplace else, meaning,
11:31:29 10 let's say, the money doesn't change place at 8250 Spurr
11 Lane, does that mean the business activity did not take
12 place there?

13 MS. KIRK: Objection.

14 THE WITNESS: No, not necessarily.

11:31:38 15 MS. KIRK: Objection. Form. Foundation.
16 Let me get my objection in there before you answer.

17 THE WITNESS: Oh, I'm sorry. It probably
18 is a business.

19 Q. (Continued by MR. ADAMS) Now, you said that
11:32:22 20 one of the things you had a problem with with respect to
21 Mr. and Mrs. Coxes' property was that you believed that
22 they intended to put up some greenhouses; is that
23 accurate?

24 A. That's one of the problems, yes.

11:32:39 25 Q. Have you ever observed -- Strike that.

1 I've handed you what has been marked as
2 Exhibit No. 14, which is identified as parcel
3 103-01-133E. Have you ever driven past that particular
4 parcel?

11:33:00 5 A. No.

6 MS. KIRK: Objection as to form.

7 Q. (Continued by MR. ADAMS) The parcel depicted
8 on Exhibit No. 14 is located within a portion of the
9 Coyote Springs Ranch where your property is located.
11:33:13 10 Does it appear that there is a greenhouse within the
11 portion of the subdivision where you live?

12 MS. KIRK: Object as to form and
13 foundation.

14 THE WITNESS: That appears to be a
11:33:20 15 greenhouse.

16 Q. (Continued by MR. ADAMS) Okay. If the owner
17 of that property is using that greenhouse to grow plants
18 or bushes for sale someplace else, would you agree that
19 that's a business activity?

11:33:33 20 A. Yes.

21 Q. Okay. Do you know who Larry Kirby is?

22 A. No.

23 MR. ADAMS: Why don't you mark that?

24 MS. KIRK: Do you have a copy?

11:34:26 25 (Deposition Exhibit 15 marked.)

1 Q. (Continued by MR. ADAMS) Does Exhibit No. 15
2 make the statement that other businesses are being
3 conducted in Coyote Springs?

4 MS. KIRK: Objection.

11:37:51 5 THE WITNESS: It says there are other
6 businesses in Coyote Springs, yes, it says that. Are we
7 done with this one?

8 MR. ADAMS: Yes.

9 (Deposition Exhibit 16 marked.)

11:38:18 10 Q. (Continued by MR. ADAMS) I've handed you
11 what's been marked as Exhibit No. 16. Do you know of an
12 entity called RT Contracting Specialists, LLC?

13 A. No.

14 Q. Have you ever heard of them?

11:38:36 15 MS. KIRK: Objection.

16 THE WITNESS: No.

17 Q. (Continued by MR. ADAMS) Do you know where
18 Orion Way is located in Prescott Valley, Arizona?

19 A. I believe it's in Coyote Springs.

11:38:49 20 Q. Orion Way is located within the portion of
21 Coyote Springs Ranch where your property is located,
22 correct?

23 A. I don't know. I don't know where Orion Way
24 is.

11:38:59 25 Q. Is there an Orion Way in your subdivision?

1 A. I believe there is.

2 Q. This appears to be a letter from somebody from
3 RT Contracting Specialists, LLC, correct?

4 MS. KIRK: Objection. Form and
11:39:13 5 foundation.

6 THE WITNESS: Would you repeat that? I'm
7 sorry.

8 Q. (Continued by MR. ADAMS) Does Exhibit No. 16
9 appear to be a letter that is addressed to my office,
11:39:26 10 from somebody with RT Contracting Specialists, LLC?

11 A. Yes.

12 MS. KIRK: Objection. Form and
13 foundation.

14 Q. (Continued by MR. ADAMS) If you go to the
11:39:42 15 first paragraph under where it says, "To Whom It May
16 Concern," it states that, "I'm the owner of 10 acres up
17 Coyote Springs and off of Turtle Rock Road." Does that
18 give you an idea of where the location for RT Contracting
19 Specialists, LLC is located?

11:40:03 20 MS. KIRK: Objection. Form and
21 foundation.

22 THE WITNESS: Yes.

23 Q. (Continued by MR. ADAMS) Do you know where
24 Turtle Rock Road is?

11:40:07 25 A. Essentially.

1 Q. And it's located within the portion of Coyote
2 Springs Ranch where your property is located, correct?

3 A. A portion of it at least.

4 Q. Okay. In the second paragraph it says, "I'm
11:40:21 5 an electrical contractor and use my home as an office and
6 a small bit of property to store materials." Did I read
7 that accurately?

8 A. Yes.

9 Q. Would you agree that his statement there
11:40:30 10 appears to indicate that he's transacting business at his
11 property?

12 MS. KIRK: Objection. Form and
13 foundation.

14 THE WITNESS: Well, he's at least
11:40:46 15 receiving phone calls there, I would think.

16 Q. (Continued by MR. ADAMS) Based upon that
17 sentence, he identifies himself as an electrical
18 contractor, correct?

19 A. "I'm an electrical contractor," yes.

11:40:57 20 Q. That's what it appears he does for a living?

21 MS. KIRK: Objection. Form.

22 THE WITNESS: That's what he says he does,
23 yes.

24 Q. (Continued by MR. ADAMS) Okay. And down
11:41:06 25 below it has the address of 1055 North Orion Way,

1 Prescott Valley, Arizona, 86314, correct?

2 A. Yes.

3 Q. And so in the paragraph where it says, "I'm an
4 electrical contractor and use my home as an office,"

11:41:20 5 would you agree that he's indicating that he uses his
6 home office at 10555 North Orion Way?

7 MS. KIRK: Objection.

8 THE WITNESS: Let me read this whole thing
9 without you picking out little pieces all the time.

11:41:37 10 Okay?

11 Q. (Continued by MR. ADAMS) Sure. Go ahead.

12 A. Okay. Okay. I've read it.

13 Q. Would you agree that this appears to indicate
14 that someone from RT Contracting Specialists, LLC

11:43:28 15 conducts business at his property located at 10555 North
16 Orion Way, Prescott Valley, Arizona?

17 MS. KIRK: Objection. Form and
18 foundation.

19 THE WITNESS: Well, he uses his -- he's
11:43:37 20 got a home office. I don't know if he does any
21 electrical work there at his home or not.

22 Q. (Continued by MR. ADAMS) Would that matter?

23 A. If he did electrical work at his home?

24 Q. No, if he doesn't do electrical work in his
11:43:52 25 home.

1 A. Well, if a professional would take a folder
2 home and work on it at home, if he had a home office, and
3 charged for it, would he be conducting business at his
4 home?

11:44:24 5 Q. Well, you're not the one asking the questions
6 today.

7 A. Oh, I'm sorry.

8 Q. I am. Let's do this: Let's go to paragraph
9 number two of the Declaration of Restrictions, identified
11:44:31 10 as Exhibit No. 1.

11 A. Okay.

12 Q. Does that say that business activities that
13 are conducted in a home office are allowed?

14 MS. KIRK: Objection. Form.

11:44:48 15 THE WITNESS: No, it doesn't.

16 Q. (Continued by MR. ADAMS) Okay. So the fact
17 that he might do the electrical services someplace else
18 and merely receive payment at the property located within
19 Coyote Springs Ranch really wouldn't matter; it would
11:45:01 20 still be a violation of the Declaration of Restrictions,
21 correct?

22 MS. KIRK: Objection.

23 THE WITNESS: I really think, you know --
24 I think you're really splitting hairs there. I can't
11:45:08 25 agree with that.

1 Q. (Continued by MR. ADAMS) So you believe it's
2 okay to have a home-based business as opposed to
3 something else, such as what Mr. and Mrs. Cox are doing?

4 MS. KIRK: Objection.

11:45:22 5 THE WITNESS: If you have an office in
6 your home, I don't think that would be a, you know -- and
7 took phone calls, I don't think that would be a violation
8 of the CC & R's, no.

9 Q. (Continued by MR. ADAMS) Would somebody doing
11:45:31 10 an accounting practice out of their home be considered a
11 business?

12 A. Well, it certainly wouldn't threaten the
13 residential nature of the area. That's --

14 Q. Well, does paragraph two of the Declaration of
11:45:53 15 Restrictions allow a home-based business?

16 A. No. No, it doesn't. It doesn't -- That's
17 not an inclusion.

18 Q. Does it exclude businesses that don't have a
19 visual impact on neighboring properties?

11:46:11 20 A. No, it doesn't.

21 Q. So a home-based business being operated within
22 the portion of Coyote Springs Ranch in which your
23 property is located constitutes a violation of paragraph
24 two, doesn't it?

11:46:19 25 A. I can't agree with that. You can, you know.

1 And I've said I don't agree with it. That's my
2 testimony. I don't agree with it, with what you're
3 saying, and that a home-based office is, you know, in
4 violation of the CC & R's.

11:46:33 5 Q. So if someone is --

6 A. I've said no. How many times -- I've said
7 no.

8 Q. Please don't interrupt me, Mr. Cundiff. If
9 somebody cuts hair for a living, in their home, in Coyote
11:46:46 10 Springs Ranch, at least the portion of the property,
11 portion in which your property is located, is that a
12 business activity that's permitted under the Declaration
13 of Restrictions?

14 MS. KIRK: Objection as to form.

11:46:57 15 THE WITNESS: No, that's not included in
16 the declarations. No, it is not.

17 Q. (Continued by MR. ADAMS) Is that something
18 that's allowable under the Declaration of Restrictions?

19 MS. KIRK: Objection. Form.

11:47:09 20 THE WITNESS: No. It doesn't say.

21 Q. (Continued by MR. ADAMS) So that kind of
22 activity would violate the Declaration of Restrictions,
23 wouldn't it?

24 A. Technically, yeah, I suppose it would.

11:47:19 25 Q. Yes. Do you know a Mr. or Mrs. Bowra, located

1 MS. KIRK: Objection. Form and
2 foundation. You've asked the question three times. He
3 has already told you he's not going to answer it.

4 THE WITNESS: I don't know. I have -- I
11:52:08 5 don't know. I have no opinion on that. I'm not going to
6 answer that.

7 Q. (Continued by MR. ADAMS) Have you ever heard
8 of Wargo Construction, Incorporated?

9 A. No. How do you spell it?

11:52:28 10 Q. W-A-R-G-O.

11 A. No.

12 Q. Do you know where 9200 East Spurr Lane is?

13 A. Not precisely, but I know where Spurr Lane is
14 essentially.

11:53:44 15 (Deposition Exhibit 18 marked.)

16 Q. (Continued by MR. ADAMS) I've handed you what
17 has been marked as Exhibit No. 18. Would you please read
18 that?

19 A. Were you addressing me?

11:53:52 20 Q. Yes.

21 A. Okay. Okay.

22 Q. Based upon your reading of Exhibit No. 18, do
23 you have an opinion regarding whether you believe that
24 Mr. and Mrs. Wargo are conducting business on their
11:56:12 25 property?

1 A. They say they have a home office.

2 Q. Okay. And if you go to the second page, in
3 the paragraph that begins with the language, "In short."

4 A. Um-hum.

11:56:34 5 Q. You see where I'm making reference?

6 A. Yes.

7 Q. It says, about the third line after it talks
8 about moving to the area, it says, "because we too wanted
9 to operate a small business from our home." Would you
11:56:46 10 agree that that appears to indicate that they are
11 operating a small business from their home located at
12 9200 East Spurr Lane, which is the address they used at
13 the top of the letter?

14 MS. KIRK: Objection. Form.

11:56:57 15 THE WITNESS: No, I won't agree. Go
16 ahead. I won't agree that that indicates they're
17 operating a business.

18 Q. (Continued by MR. ADAMS) You don't agree they
19 are probably conducting a home-based business in Coyote
11:57:07 20 Springs?

21 A. Based on this letter, no.

22 Q. You don't think they are?

23 MS. KIRK: Objection.

24 THE WITNESS: I don't know if they are or
11:57:15 25 not.

1 Q. (Continued by MR. ADAMS) How does the
2 existence of trees threaten, and I quote, "the beauty of
3 the wide open spaces and peaceful places?"

4 MS. KIRK: Object as to form.

13:33:09 5 THE WITNESS: It's a large commercial
6 enterprise.

7 Q. (Continued by MR. ADAMS) It's trees, correct?

8 A. Yeah.

9 Q. It's not a bunch of buildings, is it?

13:33:23 10 A. No.

11 Q. Do you consider the existence of trees to be a
12 threat to the peacefulness of your property out there?

13 A. Well, it's the fact that it's a large,
14 commercial enterprise.

13:33:39 15 Q. What is it that they're doing on their
16 property that you consider to be commercial?

17 A. Well, they're growing trees and have trucks
18 coming in with trees and trucks leaving with trees.
19 They're --

13:33:50 20 Q. Aren't they --

21 A. They're -- I believe that they're furnishing
22 trees to their retail outlets and perhaps others.

23 Q. Aren't there other property owners out there
24 who own commercial trucks that go in and out of Coyote
13:34:05 25 Springs Ranch?

1 A. I don't know of any. I haven't seen any.

2 Q. You've never seen any other trucks go in and
3 out of Coyote Springs Ranch? Strike that.

4 A. Sure.

13:34:15 5 Q. You haven't seen any other commercial trucks
6 go in and out of Coyote Springs Ranch, have you?

7 A. Absolutely, I have.

8 Q. So Mr. and Mrs. Cox -- Strike that.

9 The property owned by Mr. and Mrs. Cox is not
13:34:27 10 the only property in Coyote Springs Ranch where
11 commercial trucks go to and leave from, is it?

12 A. Well, I seen them going down Coyote Springs
13 Road. Where they're going or leaving from, I'm not sure,
14 but I assume it's somewhere back in Coyote Springs.
13:34:46 15 They're delivering something. Whatever they're doing,
16 there's trucks going back there on occasion, yes.

17 Q. Okay. Have you ever engaged in any type of
18 observation to count how many times a day or how many
19 times a week trucks go to and leave from Mr. and Mrs.
13:35:07 20 Cox's property?

21 A. No. No.

22 Q. So you have no idea whether it's one time a
23 day, one time a week, one time a month, do you?

24 A. No. No, I see them in there -- I see the
13:35:21 25 trucks. I see the trucks on the property more than I see

1 A. I'd like to revise that, my last answer. I
2 know who she is. I've never spoken to her.

3 Q. Okay. If you'll acknowledge, have you looked
4 at the front page, the very front, please, and just
13:45:30 5 acknowledge whether I've got the date of the newsletter
6 accurate.

7 A. Well, if you said it was July of 2004, that's
8 what it says here.

9 Q. Okay. Now, on page 15, down on the bottom
13:45:44 10 half, what is that, in your opinion?

11 A. That's an ad for Quality Bumper.

12 Q. Who owns Quality Bumper, to your knowledge?

13 A. Yeah, I believe it's Ken Page.

14 Q. Do you have any idea -- Strike that.

13:46:18 15 In your view, what would be the purpose for
16 Mr. Page to put that ad in the Lonesome Valley
17 Newsletter?

18 A. So they visit his store or call him at that
19 number.

13:46:34 20 Q. For what purpose?

21 A. To buy a bumper.

22 Q. Okay.

23 (Whereupon, a brief recess was had.)

24 Q. (Continued by MR. ADAMS) I've handed you what
13:49:22 25 is the September 2003 Lonesome Valley Newsletter. Would

1 you acknowledge that that's the date referenced?

2 A. Yes, I do.

3 Q. Okay. On the right-hand side of that
4 newsletter, what do you see?

13:49:35 5 A. "Local Hay Prices."

6 Q. Okay.

7 A. And it has a list of several people who have
8 hay for sale.

9 Q. Is there one for Northern Arizona Hay, Coyote
13:49:53 10 Springs?

11 A. Yes, there is.

12 Q. Okay. And then it has some prices for alfalfa
13 and some alfalfa, slash, grass and Bermuda, correct?

14 A. Yes.

13:50:02 15 Q. It has a thing that says, "Delivery prices, 20
16 bale minimum, all prices include sales tax," correct?

17 A. Yes, uh-huh.

18 Q. Okay. And I'd like you to look at the
19 photographs that I've just provided to you with a copy of
13:50:22 20 the same ad that's referenced in the September 2003
21 Lonesome Valley Newsletter.

22 A. Okay.

23 Q. The photographs on the left, what do they
24 depict?

13:50:32 25 A. They have a steel storage shed with hay in it.

1 Q. Okay. Would you --

2 A. It appears to be hay, at least.

3 Q. It looks like hay, correct?

4 A. It does to me, yes.

13:50:42 5 Q. And would you agree that if someone were
6 selling hay from their property in Coyote Springs Ranch
7 in exchange for money, that that would constitute a
8 business activity?

9 A. Yes.

13:50:53 10 Q. Have you ever seen that particular storage
11 facility in the portion of Coyote Springs Ranch where you
12 live?

13 A. No.

14 Q. Do you know Wiley Williams?

13:51:10 15 A. No.

16 Q. Okay. Up above the two photographs that are
17 provided to you, what is the parcel number shown there?

18 A. 401-01-005Z.

19 Q. Okay.

13:51:29 20 A. Are we through with this?

21 (Deposition Exhibit 20 marked.)

22 Q. (Continued by MR. ADAMS) Yes.

23 Now, Mr. Cundiff, just for purposes of
24 clarifying exactly what you've looked at today, I've
13:51:56 25 provided you Exhibit 20. Does it appear to be a

1 A. No, I did not.

2 Q. You have not spoken to any fireman?

3 A. I've spoken to a fireman, but he didn't sell
4 any hay. He said he was up working on his property. I
13:53:10 5 went looking for the hay seller, and I couldn't find him.

6 Q. When you went out looking, did you go based
7 upon parcel numbers?

8 A. Yes, I went with the tax parcel numbers. Yes,
9 uh-huh.

13:53:21 10 Q. Were you provided with a list, or did you use
11 a list of parcel numbers that you were assigned to go
12 look at --

13 A. They were -- I think we used the list that
14 the Coxes furnished.

13:53:40 15 Q. Okay. Would you consider -- Strike that.

16 If a property owner in Coyote Springs Ranch
17 where you live shipped into their property produce and
18 then relocated that produce to the Farmer's Market or any
19 sort of retail location for sale, would you consider that
13:54:40 20 to be a business or commercial activity?

21 A. Yes.

22 Q. How would you define what is a business
23 activity in the context of the Declaration of
24 Restrictions?

13:55:16 25 A. Do you have a copy of it here?

1 MS. KIRK: It's somewhere. Here.

2 THE WITNESS: It says, in looking at two,
3 "No trade, business, profession or any other type of
4 commercial or industrial activity shall be initiated or
13:55:42 5 maintained within said property or any portion thereof."
6 Okay.

7 Q. (Continued by MR. ADAMS) What do you believe
8 constitutes a business or commercial activity within the
9 scope of paragraph two of the Declaration of
13:55:56 10 Restrictions?

11 A. That you would do work on your property and
12 charge for it or you would have a business located on
13 your property and sell things, and I -- Let's see.
14 Profession. Trade would be, I guess, that people bring
13:56:30 15 things to your, to your property and you work on them.
16 That's -- Is that --

17 Q. So does business -- Strike that.

18 Does business activity on property in the
19 portion of Coyote Springs Ranch where you live require
13:56:47 20 that you actually charge for whatever it is you're doing
21 or selling on the premises?

22 A. Pardon me? You'll have to repeat that.

23 MR. ADAMS: If you can go back up. Read
24 his answer back please.
25

1 Whereupon, the following answer was read
2 back by the court reporter:

3 "ANSWER: That you would do work on your
4 property and charge for it or you would have a business
5 located on your property and sell things, and I -- Let's
6 see. Profession. Trade would be, I guess, that people
7 bring things to your, to your property and you work on
8 them. That's -- Is that --"

9
10 Q. (Continued by MR. ADAMS) Okay. Now, you just
11 testified that you would define a business activity as
12 conducting business on your property and charging for it
13 or selling items from your property. Would you include
14 that as a business or commercial activity on property
15 within Coyote Springs Ranch?
13:57:51

16 A. Yeah. Okay.

17 Q. Okay. So if somebody doesn't actually charge
18 money on their property or conduct the business itself --
19 Strike that.

13:58:07 20 With respect to properties located in the
21 portion of Coyote Springs Ranch where your property is
22 located, a business or commercial activity -- Boy.
23 Strike that.

24 Let's start over.

13:58:29 25 A. Okay.

1 Q. Based upon the definition that you just gave
2 for a business or commercial activity --

3 A. Um-hum.

4 Q. -- in order to fall within the scope of the
13:58:37 5 Declaration of Restrictions, would one be required to
6 actually receive money on the property for it to fall
7 within the definition of paragraph two?

8 MS. KIRK: Object as to form.

9 THE WITNESS: No.

13:58:50 10 Q. (Continued by MR. ADAMS) So the transaction
11 could occur off-site and a person who owns, person who is
12 doing that transaction, if they own property within
13 Coyote Springs Ranch, they could still be doing
14 commercial activities on their Coyote Springs Ranch
13:59:06 15 property, correct?

16 A. You mean like they have trees there and then
17 they put them on?

18 Q. Let's use a different example.

19 A. No, I like that one. Then they take them to
13:59:14 20 the retail outlet?

21 Q. You consider that to be a business or
22 commercial activity --

23 A. Yes.

24 Q. -- that's being conducted on the property
13:59:22 25 within Coyote Springs Ranch?

1 A. Yes.

2 Q. Would it be the same then, if somebody is
3 raising goats or sheep or cattle?

4 A. And doing what with them?

13:59:31 5 Q. Taking them someplace to sell.

6 A. Oh, yeah.

7 Q. Okay. So those people, if they were doing
8 that kind of activity within Coyote Springs Ranch, would
9 be engaging in business or commercial activities that are
10 prohibited by the Declaration of Restrictions, correct?

11 A. That appears to be the case.

12 Q. The same could be said with alpacas or llamas,
13 correct?

14 A. What are they doing with the alpacas or
13:59:59 15 llamas?

16 Q. Selling them.

17 A. Oh, they're selling them?

18 Q. Using them for wool that they take off-site
19 and sell someplace else. Would that be a business or
14:00:12 20 commercial activity?

21 A. That's proposing the strictest interpretation.
22 It could be.

23 Q. If that's what they're doing, wouldn't that be
24 a business or commercial activity?

14:00:17 25 A. And cutting hair, too, yeah. Well, I suppose

1 it would be.

2 Q. Do you know Art and Debra Gustafson?

3 A. No.

4 Q. Have you ever heard of Sherwood Forest Trees?

14:01:23 5 A. No.

6 Q. Would you consider operating a camp that is
7 religiously oriented that is used for assisting or taking
8 care of handicap people in exchange for money to be a
9 business or commercial activity within the scope of the
10 Declaration of Restrictions?

11 A. In exchange for money?

12 Q. Yes.

13 MS. KIRK: Object as to form.

14 THE WITNESS: I'd have to know more about
14:02:07 15 it. I don't know how -- what -- Repeat that, would you
16 please?

17 MR. ADAMS: Read that back.

18

19 Whereupon, the following question was read
20 back by the court reporter:

21 "QUESTION: Would you consider operating a
22 camp that is religiously oriented that is used for
23 assisting or taking care of handicap people in exchange
24 for money to be a business or commercial activity within
25 the scope of the Declaration of Restrictions?"

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MS. KIRK: Same objection.

THE WITNESS: I think it would take a really narrow interpretation to include that as a business.

14:02:42

Q. (Continued by MR. ADAMS) If they do it for money?

A. Well, you said it was charitable, didn't you, or did you not?

14:02:52

Q. No. I said it was a Christian --

A. Oh, Christian.

Q. -- organization --

A. Oh, a Christian organization.

14:03:08

Q. -- that takes care of handicap people in exchange for money. Would that be a business activity?

A. Well, in the strictest interpretation, yes.

Q. So if somebody was engaging in that type of activity in Coyote Springs Ranch, would that be a violation to the Declaration of Restrictions?

14:03:22

MS. KIRK: Object as to form.

THE WITNESS: Yeah.

MR. ADAMS: I have no further questions.

MS. KIRK: We'll read and sign.

(WHEREUPON, the proceedings were concluded at the approximate hour of 2:03 p.m.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C.
CUNDIFF, husband and wife;
ELIZABETH NASH, a married woman
dealing with her separate
property; KENNETH PAGE and
KATHERYN PAGE, as Trustees of
the Kenneth Page and Katheryn
Page Trust,

Plaintiffs,

vs.

DONALD COX and CATHERINE COX,
husband and wife,

Defendants.

No. CV 2003 0399

DEPOSITION OF ELIZABETH NASH

Prescott Valley, Arizona
September 10, 2004
10:08 a.m.

REPORTED BY:
RENA F. LOTT, RPR
Certified Court Reporter
Certificate No. 50495

LOTT REPORTING, INC.

316 North Alarcon Street
Prescott, AZ 86301
928.776.1169

ORIGINAL

1 attorneys?

2 MS. KIRK: Object as to form.

3 THE WITNESS: I have not spoken with my
4 attorneys regarding money.

10:19:09 5 Q. (Continued by MR. ADAMS) Okay. You have no
6 information regarding who is paying your attorneys to
7 pursue the litigation against my clients?

8 MS. KIRK: Object as to form. That's the
9 fourth time you've asked the same question, Counsel.

10:19:27 10 MR. ADAMS: No, my question is different,
11 Counsel.

12 Please read back my question to her.

13 (Whereupon, the previous question was read
14 back by the court reporter.)

10:19:40 15 THE WITNESS: I have heard that Alfie is
16 paying some, but there are other people who have also
17 paid.

18 Q. (Continued by MR. ADAMS) When you say you
19 heard, who did you hear it from?

10:19:55 20 A. I do not recall.

21 Q. Turn to the first page of the Declaration of
22 Restrictions, please. Explain to me what paragraph two
23 means.

24 MS. KIRK: Object as to form.

10:20:23 25 THE WITNESS: That you cannot have a

1 commercial or industrial business.

2 Q. (Continued by MR. ADAMS) Provide for me your
3 definition of what a commercial or industrial business
4 is.

10:20:40 5 A. Hmmm, well, industrial business would be
6 somebody who has a business on their property for money,
7 I guess, to --

8 Q. Does it require the exchange of money on the
9 property in Coyote Springs Ranch in order for it to be
10:21:07 10 considered subject to paragraph two of the Declaration of
11 Restrictions?

12 MS. KIRK: Object as to form.

13 THE WITNESS: I wouldn't think so.

14 Q. (Continued by MR. ADAMS) Why not?

10:21:12 15 A. Well, if you have -- you could be doing
16 something there that will get you money other places that
17 you take something, or whatever, and doing, likely, what
18 they're doing is growing their trees there for money to
19 be sold at their nurseries.

10:21:41 20 Q. Okay. So would you agree that if someone in
21 Coyote Springs Ranch were operating, using their property
22 to grow trees for sale, actually from their property,
23 that would be a business or commercial activity?

24 A. Yes.

10:21:55 25 Q. Are you aware of the Christmas tree farm in

1 Coyote Springs Ranch?

2 A. No, sir.

3 Q. Never seen or heard of it?

4 A. No.

10:22:02 5 Q. Do you know who Curtis Kincheloe is?

6 A. No, I don't.

7 Q. Would repairing cars in exchange for money in
8 Coyote Springs Ranch be a business or commercial
9 activity?

10:22:13 10 A. Yes.

11 Q. Have you ever heard of Coyote Curt's Auto
12 Repair?

13 A. No.

14 Q. Ever heard of Wargo Construction?

10:22:22 15 A. No.

16 Q. Would be using property in Coyote Springs
17 Ranch as part of a construction company be subject to
18 paragraph two of the Declaration of Restrictions?

19 MS. KIRK: Object as to form.

10:22:36 20 THE WITNESS: Well, I would say if he's
21 operating, but -- Construction company? What's, his
22 truck parked there, or -- People don't go there, do
23 they? I don't know. I'm not familiar with the business,
24 so I cannot say.

10:22:51 25 Q. (Continued by MR. ADAMS) Would boarding

1 horses in exchange for money on property in Coyote
2 Springs Ranch be a business or commercial activity, in
3 your view?

4 A. Hmmm, no.

10:23:16 5 Q. Why not?

6 A. Because the horses are just there.

7 Q. Okay. If someone brings their horse to
8 property in Coyote Springs Ranch and the people who own
9 the property accept money in exchange for performing
10:23:31 10 those services, wouldn't that be a commercial or business
11 activity?

12 A. I don't know if it is their business or not.
13 I wouldn't consider it, no.

14 Q. Why not?

10:23:39 15 A. I just wouldn't. I don't --

16 Q. You said that doing anything on the property
17 in Coyote Springs Ranch in exchange for money is a
18 business activity. I want to know why you think that
19 boarding horses in exchange for money on property in
10:23:54 20 Coyote Springs Ranch is not a business activity.

21 A. I don't know if it's their business. I do not
22 consider that. I'm -- that -- I have no reason why. I
23 just don't consider that.

24 Q. Okay. If someone in Coyote Springs, living in
10:24:10 25 the portion of Coyote Springs Ranch where your property

1 is located, makes quilts and sells them, do you consider
2 that to be a business activity?

3 MS. KIRK: Object as to form.

4 THE WITNESS: No.

10:24:19 5 Q. (Continued by MR. ADAMS) Why not?

6 A. It's a craft. It's a hobby, I would imagine.

7 Q. So what's your definition of a hobby?

8 A. Something you enjoy doing.

9 Q. Distinguish that from a business.

10:24:39 10 MS. KIRK: Object as to form.

11 THE WITNESS: Distinguish making quilts
12 from a business?

13 Q. (Continued by MR. ADAMS) Distinguish making
14 quilts in exchange for money from a business.

10:24:52 15 A. I just do not consider it a business that
16 somebody is making quilts and selling them. I don't
17 think that they can make a livelihood off of that.

18 Q. So is it your position, then, that the only
19 way something is a business is if you generate a
10:25:12 20 livelihood?

21 A. I think there are a lot of things that
22 distinguish a business, sir.

23 Q. Such as what?

24 A. If that is your livelihood, that would be one
10:25:22 25 thing, yes.

1 Q. Okay. So if somebody --

2 A. You're paying taxes, that would be a business.

3 Q. Okay. If somebody is making quilts on their

4 property in Coyote Springs Ranch, they accept money in

10:25:39 5 exchange for making those quilts, and they report their

6 earnings on their tax returns, would that person be,

7 then, conducting a business?

8 A. I don't consider that a business, no.

9 Q. Okay. What if they have a license to do that?

10:25:52 10 Would it then be a business?

11 A. I don't know.

12 Q. If someone is repairing cars in exchange for

13 money on property in Coyote Springs Ranch, would they be

14 subject to paragraph two of the Declaration of

10:26:11 15 Restrictions?

16 A. Yes.

17 Q. Why?

18 A. Well, that's their livelihood, they would be.

19 Q. Okay. How do you distinguish --

10:26:15 20 A. That's their only form of income. That's how
21 they make their living.

22 Q. So if it's only somebody's sole source of
23 income, then it's a business, but if it's not, then it's
24 not; is that your position?

10:26:28 25 MS. KIRK: Object as to form. Answer if

1 you can.

2 THE WITNESS: I can't answer that. I'm
3 sorry. You have me too confused. I'm sorry. I can't
4 answer that.

10:26:40 5 Q. (Continued by MR. ADAMS) Okay. Is selling
6 quilts in exchange for money different than repairing
7 cars in exchange for money, in your view?

8 MS. KIRK: Object as to form.

9 THE WITNESS: A person selling -- I don't
10:26:59 10 believe that if they're selling quilts, it's not like a
11 store where you go buy quilts. It's probably one or two
12 quilts a year, or whatever. I don't know. But if you
13 want to use the quilt thing as an example, no, I don't
14 believe that's a business.

10:27:12 15 Q. (Continued by MR. ADAMS) How is it different
16 than repairing a car in exchange for money?

17 A. As I said before, sir, if that is his sole
18 livelihood, and that's what he's doing on his property,
19 then, yes, that's a business.

10:27:26 20 Q. Okay. Would you agree then that that's not
21 much different than someone who trains horses in exchange
22 for money?

23 MS. KIRK: Object as to form.

24 THE WITNESS: Trains horses?

10:27:37 25 Q. (Continued by MR. ADAMS) Yes.

1 A. I don't know if they're doing it as a hobby or
2 as their sole thing. You know, a person who -- Are they
3 doing it all the time? Is that -- You know, there are a
4 lot of things that I don't know. I don't know.

10:27:56 5 Q. So let's go back then. I would like you to
6 provide me with your definition of what a business or a
7 commercial activity is.

8 MS. KIRK: Object as to form.

9 THE WITNESS: I don't know, because I have
10:28:15 10 my business in an office where I conduct my business, so
11 my idea of a business is to have an office, and that's
12 where you conduct your business.

13 Q. (Continued by MR. ADAMS) Would you agree,
14 then, that performing accounting services in an office
10:28:33 15 that happens to be located within Coyote Springs Ranch is
16 a business or commercial activity?

17 A. I wouldn't consider that with the CC & R's.

18 Q. Well, you just said that a business is having
19 an office and that's where you transact a business.

10:28:51 20 A. Right.

21 Q. Okay. So why is that not considered a
22 business if it's being done in Coyote Springs Ranch?

23 MS. KIRK: Object as to form.

24 THE WITNESS: If it's done in somebody's
10:29:00 25 house?

1 Q. (Continued by MR. ADAMS) What if they have an
2 office in their house and that's where they transact
3 their business?

4 A. A lot of people have home offices.

10:29:07 5 Q. Okay. Is that a business activity?

6 A. He's just performing his work there. He's not
7 having people coming in and out, or whatever. I don't
8 know.

9 Q. Is selling hay -- Strike that.

10:29:26 10 If someone in Coyote Springs Ranch is using
11 their property to sell hay to members of the general
12 public, would that be considered a business activity?

13 MS. KIRK: Object as to form.

14 THE WITNESS: I don't know, sir. I'd have
10:29:44 15 to see the business. I do not know.

16 Q. (Continued by MR. ADAMS) Have you ever heard
17 of Saunders Racing Stables?

18 A. No.

19 Q. Do you know who Bruce Friis-Pettit is?

10:30:26 20 A. No.

21 Q. Have you ever heard of All New Again Paintless
22 Dent Removal and Windshield Repair?

23 A. No.

24 Q. Do you know where 8750 East Faraway Place is?

10:30:39 25 A. No.

1 A. Yes.

2 Q. What is his relationship to Kenneth and
3 Katheryn Page?

4 A. He's Kenneth's son.

10:33:02 5 Q. And Mr. Page's son gave you the phone number
6 for Leo Murphy of Dependable Dutchman Excavating to
7 perform work at your property, correct?

8 A. Yes.

9 Q. And, again, Mr. Murphy, to your knowledge,
10:33:15 10 lives out in Coyote Springs Ranch, correct?

11 A. He lives there. I don't know where.

12 Q. Okay.

13 A. I've never been there.

14 Q. Have you pursued Mr. and Mrs. Murphy for
10:33:25 15 enforcement of the Declaration of Restrictions against
16 them for conducting a business or commercial activity?

17 MS. KIRK: Objection. Foundation.

18 THE WITNESS: No.

19 Q. (Continued by MR. ADAMS) Would you consider
10:33:35 20 what they did for you to have been a business activity?

21 A. Yes.

22 Q. It wasn't a hobby, in your view, was it?

23 A. No.

24 Q. You had compensated them for the work they
10:33:51 25 performed for you, correct?

1 A. Yes.

2 Q. Do you know who Kevin and Pamela Eikleberry
3 is?

4 A. No.

10:33:52 5 Q. Have you ever heard of Trilogy Ranch, LLC?

6 A. No.

7 Q. Ever heard of Eikleberry Racing Enterprises?

8 A. No.

9 Q. Ever heard of Arizona Horseman's Benevolent
10 and Protective Association, Incorporated?

11 A. No.

12 Q. Have you ever heard of Wiley Williams?

13 A. No.

14 Q. Do you know where East Turtle Rock is?

10:34:17 15 A. No.

16 Q. Have you ever heard of Northern Arizona Hay,
17 Incorporated?

18 A. No.

19 Q. Have you ever heard of Arthur Gustafson?

10:34:23 20 A. No.

21 Q. Have you ever heard of Blackhawk Builders,
22 Incorporated?

23 A. No.

24 Q. Have you ever heard of Blackhawk Construction?

10:34:29 25 A. No.

1 A. I don't know where it is, no. I mean, I know
2 it's Coyote Springs, but . . .

3 Q. Have you ever heard of Cobra Enterprises,
4 Incorporated?

10:36:56 5 A. No.

6 Q. Do you know Wendy L. Changose, spelled
7 C-H-A-N-G-O-S-E?

8 A. No.

9 Q. Have you ever heard of Accent Southwest
10 Furnishings?

11 A. No.

12 Q. Ever heard of Lonesome Valley Gift Basket
13 Company?

14 A. No.

10:37:11 15 Q. Why do people form corporations --

16 MS. KIRK: Object as to form.

17 Q. (Continued by MR. ADAMS) -- in your view?

18 A. I don't know, sir. Tax purposes? I don't
19 know.

10:37:20 20 Q. You have several companies, correct?

21 MS. KIRK: Object. Foundation.

22 THE WITNESS: Yes.

23 Q. (Continued by MR. ADAMS) You and your husband
24 run several corporations, correct?

10:37:25 25 A. Along with my children, yes.

1 MS. KIRK: Objection. Form.

2 THE WITNESS: It could be. I don't know.

3 I've never been down there. I don't know who he is.

4 I've never been there, so I don't know.

10:53:24 5 Q. (Continued by MR. ADAMS) Is it possible that
6 business is being conducted at that address?

7 MS. KIRK: Objection. Form.

8 THE WITNESS: Sir, it's possible, but I'm
9 not an eyewitness, so I don't know.

10:53:29 10 Q. (Continued by MR. ADAMS) Have you ever
11 spoken -- Well, you indicated you hadn't spoken to Mr.
12 Pearson so you don't know whether he is or is not
13 conducting any business?

14 A. No, I don't.

10:53:37 15 Q. If he is conducting business at his property,
16 is that a violation of the Declaration of Restrictions,
17 in your view?

18 MS. KIRK: Objection. Form.

19 THE WITNESS: If he has a home office,
10:53:46 20 that's not a violation to me.

21 Q. (Continued by MR. ADAMS) Why not?

22 A. Because it's not taking away from the
23 residential status of the property if he just has his
24 paperwork there. He's not performing -- He's not doing
10:54:00 25 insulation work on his -- at his house. He has to go to

1 other people's houses to do the insulation.

2 Q. Well, you testified earlier that conducting a
3 business or commercial activity does not require actually
4 doing the work at the property itself, so why is that
10:54:20 5 different from your definition?

6 MS. KIRK: Object. Form.

7 THE WITNESS: I just don't feel that
8 having a home office where you're doing your paperwork is
9 your business.

10:54:31 10 Q. (Continued by MR. ADAMS) Okay. Let's go to
11 Exhibit No. 1 then.

12 A. No. 1? That is this?

13 MS. KIRK: Yes.

14 Q. (Continued by MR. ADAMS) Correct. Go to
10:54:37 15 paragraph two. And I'd like you to point out to me where
16 it provides that a business activity does not include a
17 home office.

18 A. It doesn't say that. I'm just giving you my
19 opinion.

10:54:48 20 Q. Show me in there, in the Declaration of
21 Restrictions, where it provides that someone can conduct
22 a business activity that is done out of a home office?

23 MS. KIRK: Objection. Form.

24 THE WITNESS: I believe I just answered
10:55:00 25 that, that I said it doesn't say that, that that was my

1 opinion.

2 Q. (Continued by MR. ADAMS) Does the Declaration
3 of Restrictions prohibit agricultural activities?

4 A. I don't know. I'd have to read all of it.

10:55:13 5 Q. Scan through that and see if you can see
6 anything in there that prohibits agricultural activities.

7 MS. KIRK: Objection. Form.

8 THE WITNESS: This number six, I can't
9 even read the -- It's not all on there, and you can't
10:55:26 10 read all of it. I don't see anything where it
11 specifically states agricultural.

12 Q. (Continued by MR. ADAMS) So there's nothing
13 in the Declaration of Restrictions that prohibits
14 agricultural activities, is there?

10:56:12 15 MS. KIRK: Objection. Form.

16 THE WITNESS: Not that I see.

17 Q. (Continued by MR. ADAMS) You have no
18 knowledge?

19 A. I don't know what this says, though.

10:56:23 20 Q. Would it be accurate that you have never
21 received any information indicating that Mr. and Mrs. Cox
22 actually conduct sales transactions on the property in
23 Coyote Springs Ranch, correct?

24 MS. KIRK: Objection. Form and
10:56:35 25 foundation.

1 THE WITNESS: I'm sorry. Would you say
2 that again?

3 MR. ADAMS: Would you read that back
4 please?

10:56:51 5 (Whereupon, the preceding question was
6 read back by the court reporter.)

7 THE WITNESS: That would be correct.

8 Q. (Continued by MR. ADAMS) Okay. I have handed
9 you Exhibit No. 2. I'd like you to look at that document
10:57:07 10 and tell me, or identify for me, which people on that
11 list that you know.

12 A. Leo Murphy, but I never knew his last name was
13 Murphy. Leo Murphy.

14 Q. None of the other names on there look familiar
10:58:11 15 to you?

16 A. No, because I don't really know anybody out
17 there.

18 Q. My question was, you don't recognize any of
19 the names?

10:58:22 20 A. No, sir.

21 Q. Okay. It's your position today that boarding
22 horses in exchange for money is not a business activity?

23 A. Correct.

24 Q. It's your position that training horses in
10:58:46 25 exchange for money is not a business activity?

1 MS. KIRK: Objection. Form.

2 THE WITNESS: Correct.

3 Q. (Continued by MR. ADAMS) What I'd like --
4 How long have you owned businesses with your husband?

10:58:55 5 A. Oh, boy. Over 20 years.

6 Q. Prior to the time you and your husband started
7 operating businesses, what did you do?

8 A. I was a mother and a housewife.

9 Q. All right. Tell me about your educational
10:59:18 10 background.

11 A. I finished high school, and I had some
12 college.

13 Q. Where did you go to college?

14 A. Glendale Community College.

10:59:26 15 Q. When was that?

16 A. Oh, boy. I believe around 1980?

17 Q. What classes did you take when you went to
18 Glendale Community College?

19 A. Computer classes.

10:59:45 20 Q. Was that it?

21 A. Yes.

22 Q. There was no other class that you took that
23 did not deal with computers?

24 A. No.

10:59:52 25 Q. Why did you take computer classes?

1 A. Because computers were the things to know at
2 that time.

3 Q. And how long after you stopped taking classes
4 at Glendale Community College did you and your husband
11:00:08 5 first start operating businesses?

6 A. We were operating before that.

7 Q. Okay. Prior to the time your husband -- you
8 and your husband went into business together, what did
9 you do for a living?

11:00:26 10 MS. KIRK: Objection. Form.

11 THE WITNESS: I worked at the telephone
12 company.

13 Q. (Continued by MR. ADAMS) Were you an
14 employee?

11:00:32 15 A. Yes.

16 Q. So at least since 1980 you and your husband
17 have operated businesses; is that accurate?

18 A. Correct.

19 Q. Now, you have -- Strike that.

11:00:56 20 So at least for 25 or 30 years you and your
21 husband have been operating businesses, correct?

22 A. Correct.

23 Q. And been engaged in what you would consider to
24 be business and commercial activities --

11:01:09 25 A. Yes.

1 Q. -- correct?

2 A. Yes, correct.

3 Q. So what I'd like you to do, given your

4 enormous amount of knowledge regarding your and your

11:01:16 5 husband's businesses, give me a definition for what a

6 business and commercial activity is.

7 MS. KIRK: Objection. Form.

8 THE WITNESS: Would you repeat that,

9 please? My enormous ability -- Would you repeat that?

11:01:30 10 Q. (Continued by MR. ADAMS) You've had 25 to
11 30 years of experience in operating businesses, correct?

12 A. Yes.

13 Q. I'd like you to give me your definition for
14 what a business or commercial activity is.

11:01:41 15 MS. KIRK: Objection. Form.

16 THE WITNESS: It's what we do for our
17 livelihood to make a living.

18 Q. (Continued by MR. ADAMS) Is that it?

19 A. That's it.

11:01:50 20 Q. That's the only way you can define a business
21 activity or a commercial activity?

22 MS. KIRK: Objection. Form.

23 THE WITNESS: Yes, sir.

24 Q. (Continued by MR. ADAMS) There's nothing else
11:01:57 25 that goes into it, other than earning a livelihood?

1 MS. KIRK: Objection. Form.

2 THE WITNESS: I don't understand what you
3 want me to say. That's --

4 Q. (Continued by MR. ADAMS) I want you to tell
11:02:05 5 me --

6 A. Yes, sir.

7 Q. You've been engaged in business for 25 or 30
8 years?

9 MS. KIRK: Objection. Form.

11:02:12 10 Q. (Continued by MR. ADAMS) So if your sole
11 definition for what constitutes a business or commercial
12 activity is to generate a living, I want to know if
13 that's the case?

14 MS. KIRK: Objection. Form. Asked and
11:02:18 15 answered. She has already testified. This is the fourth
16 time you've asked the same the question, Counselor.

17 Q. (Continued by MR. ADAMS) Please answer the
18 question.

19 A. Yes, sir.

11:02:26 20 Q. Okay. Would selling goods in exchange for
21 money be considered a business activity, in your view?

22 A. It would have to depend on what the goods are
23 and --

24 Q. Why?

11:02:48 25 A. If that's their --

1 MS. KIRK: Let her finish her answer.

2 THE WITNESS: Because, sir, some people
3 have a yard sale and they sell goods, and that's not a
4 business activity for them. They're having a yard sale.

11:02:59 5 Some kids sell fruit out on the side of the
6 road, and that's conducting -- changing money and selling
7 something, and that's not a business activity. It's not
8 a yes or no thing with me. I'm sorry.

9 Q. (Continued by MR. ADAMS) Hmmm.

11:03:20 10 A. Hmmm. I don't know what that meant.

11 Q. I hand you what has been marked as Exhibit No.
12 4. Would you agree or disagree that the business card
13 there -- Or strike that.

14 On Exhibit No. 4, do you see what appears to
11:03:31 15 be a business card?

16 MS. KIRK: Objection. Form.

17 THE WITNESS: I don't know if it's a
18 business card. It says a ranch. A lot of people call
19 their places a ranch.

11:03:40 20 Q. (Continued by MR. ADAMS) What does the --

21 A. A lot of people have --

22 Q. What does the item on the right-hand side of
23 Exhibit No. 4 that says Carlin Ranch on it, appear to be,
24 in your view?

11:03:49 25 A. To me it looks like those cards that people

1 appear that the Yellow Page advertisement appears to
2 advertise Weir Stables?

3 A. Yes.

4 Q. And would you agree if you were to call
11:04:57 5 775-5340, that would be a phone number that you would
6 dial to get in touch with Weir Stables?

7 A. Yes.

8 Q. But, again, you don't think that training
9 horses and boarding horses in exchange for money is a
11:05:12 10 business activity?

11 MS. KIRK: Objection. Form.

12 THE WITNESS: I don't know to what extent
13 they do it, sir, so I could not say.

14 Q. (Continued by MR. ADAMS) Could training
11:05:20 15 horses in exchange for money be a business activity?

16 A. It could be.

17 Q. What circumstances, in your view, would allow
18 it to be considered a business activity?

19 A. Sir, I don't know to what extent they do it.
11:05:32 20 It would matter to what extent they do it.

21 Q. And I'm asking you, what would you -- at what
22 point would you determine that it would be a business
23 activity?

24 A. Well, if that would be the only thing that
11:05:45 25 they do. If they -- you know, I don't know -- There are

1 a lot of variables.

2 Q. Such as what?

3 A. I don't know what other activities they do,
4 other ways that they raise money, that they make their
11:05:59 5 money. I do not know.

6 Q. Why would those have any impact on whether
7 their breeding of horses or training of horses --

8 A. I don't think breeding horses is a -- I don't
9 know. I guess it's a business. I'm not that well-versed
11:06:15 10 in horse things, so I don't know for sure.

11 Q. So you don't think that breeding horses in
12 exchange for money is a business or commercial activity?

13 MS. KIRK: Objection. Form.

14 THE WITNESS: It could be. I don't know
11:06:33 15 for sure.

16 Q. (Continued by MR. ADAMS) Under what
17 circumstances do you view it could be?

18 A. I don't know.

19 Q. So do you think that somebody has to be doing
11:06:41 20 multiple things in order to be considered in business, or
21 can they do just one thing and that would be considered a
22 business?

23 A. They can do just one thing.

24 Q. Okay. So what other things that they do have
11:06:53 25 any impact on whether their horse breeding or horse

1 training activities would be considered a business
2 activity?

3 A. Well, sir, I don't know if they breed one
4 horse or if they breed several horses. I don't know
11:07:03 5 what -- I don't know.

6 Q. Why would the volume of horses that they breed
7 have any impact on your determination that it would or
8 would not be a business or commercial activity?

9 MS. KIRK: Objection. Form.

11:07:13 10 THE WITNESS: It's just my feelings.

11 Q. (Continued by MR. ADAMS) If they do that in
12 exchange for money, you still don't think that that's a
13 business or commercial activity?

14 MS. KIRK: Objection. Form.

11:07:21 15 THE WITNESS: I don't know to what extent
16 they do it.

17 Q. (Continued by MR. ADAMS) What do you mean by
18 extent?

19 A. I don't know if that's what they do all the
11:07:27 20 time. I don't know. If I had a horse and bred it and
21 got money, I wouldn't consider that my business.

22 Q. Why not?

23 A. I just wouldn't, because I don't do it all the
24 time.

11:07:35 25 Q. You wouldn't consider the activity in and of

1 itself --

2 A. Correct.

3 Q. -- of doing what you were doing in exchange
4 for money, a single business activity, even if you do it
11:07:47 5 once?

6 MS. KIRK: Objection. Form.

7 THE WITNESS: Correct. Correct.

8 Q. (Continued by MR. ADAMS) You accept
9 compensation for what you do, you don't consider that to
11:07:52 10 be a business activity?

11 MS. KIRK: Objection. Form.

12 THE WITNESS: I would not consider it a
13 commercial business, no, sir.

14 Q. (Continued by MR. ADAMS) I didn't ask if it
11:07:57 15 was a commercial business. I'm asking if that one
16 transaction was considered a business activity.

17 MS. KIRK: Objection. Form.

18 THE WITNESS: Well, now, it's a matter of
19 semantics, I believe. And I do not believe that, no,
11:08:10 20 sir.

21 Q. (Continued by MR. ADAMS) What if they breed
22 20 horses, would that be a business activity?

23 Let the record reflect that Counsel rolls her
24 eyes when she looks at her client.

11:08:23 25 MS. KIRK: Strike that from the record.

1 If you're going to continue like this, badgering the
2 witness, arguing with her, making your own sighs, making
3 your own facial gestures, smirking at her when she is
4 testifying, then we're just going to have to call this at
41 5 an end.

6 MR. ADAMS: Do what you want to do,
7 Counselor.

8 Answer the question, please.

9 MS. KIRK: No. Wait a second. You're not
43 10 going to be putting crap on the record.

11 MR. ADAMS: We've put it on the record.
12 You've got your own comments on the record. You do what
13 you need to do, Counsel.

14 MS. KIRK: Stop badgering her.

51 15 MR. ADAMS: Ball's in your court. You do
16 what you want to do.

17 MS. KIRK: Stop badgering her.

18 MR. ADAMS: I'm going to ask my questions
19 the way that I want to ask them.

59 20 MS. KIRK: Stop arguing with her.

21 MR. ADAMS: You do what you need to do.

22 MS. KIRK: Stop arguing with her.

23 MR. ADAMS: Are you going to allow your
24 client to answer the question?

06 25 MS. KIRK: If you can recall the question,

1 feel free to answer it, if you can.

2 MR. ADAMS: Go back to the question and
3 repeat it, please.

4 (Whereupon, the preceding question was
11:09:28 5 read back by the court reporter.)

6 MS. KIRK: Objection. Form.

7 THE WITNESS: I don't know if it would be
8 or not.

9 Q. (Continued by MR. ADAMS) How many horses
11:09:47 10 would a horse breeder have to breed before you would
11 consider it a business activity?

12 MS. KIRK: Objection. Form.

13 THE WITNESS: There is no number, sir. I
14 would not know. I do not know their business.

11:10:02 15 Q. (Continued by MR. ADAMS) Have you asked them?

16 A. No, I haven't.

17 Q. Have you had any conversations with any
18 property owners in Coyote Springs Ranch regarding their
19 uses of their property?

11:10:11 20 A. No.

21 Q. Not a single property owner in Coyote Springs
22 Ranch?

23 A. No.

24 Q. Tell me the different businesses that you and
11:10:38 25 your husband have owned and operated.

1 A. A plumbing and fire sprinkler company.

2 Q. Is that the only one?

3 A. Yes.

4 Q. What do you do in your company?

11:10:48 5 A. We install plumbing and fire sprinklers.

6 Q. Do you have a business location?

7 A. Yes.

8 Q. Where is that location?

9 A. In Phoenix, Arizona.

11:10:59 10 Q. The address, please?

11 A. 601 West Gibson Lane.

12 Q. Is that a commercial property where that
13 business is located?

14 A. Yes, it is.

11:11:10 15 Q. Do you have a sign out front?

16 A. No, sir.

17 Q. Do you have any sign on the door?

18 A. Yes, sir.

19 Q. What does the sign on the door say?

11:11:19 20 A. Nash Building Consolidated, LLC, doing
21 business as, Eagle Mechanical and Stop Fire.

22 Q. Why do you have the sign on your door?

23 A. So people know where we are.

24 Q. Do you put your sign on your door so that
11:11:44 25 people looking at your door would know that they could

1 A. It says mobile number, so I guess it would be
2 his mobile.

3 Q. Okay. But that's who you would expect to get
4 in touch with, at least, correct?

11:15:28 5 A. Um-hum.

6 Q. Do you recognize East Faraway Place as a
7 street in Coyote Springs Ranch?

8 A. I don't -- I don't know for sure.

9 Q. If 8750 East Faraway Place is in the portion
11:15:43 10 of Coyote Springs Ranch where your property is located,
11 does it appear, based upon the business card on Exhibit
12 9, that a business activity is being conducted at that
13 property?

14 MS. KIRK: Objection. Form.

11:15:51 15 THE WITNESS: Is this his property here?

16 Q. (Continued by MR. ADAMS) I'm just asking
17 about the business card.

18 A. Oh. Oh, I see. It could be.

19 Q. That appears to --

11:16:01 20 A. I don't know.

21 Q. It appears that that's evidence that some sort
22 of business activity is --

23 A. It could be.

24 Q. -- taking place there?

11:16:10 25 MS. KIRK: Objection. Form.

1 Let him finish his questions.

2 THE WITNESS: Okay.

3 Q. (Continued by MR. ADAMS) I've handed you what
4 has been marked as Exhibit No. 10. I'd like you to look
5 on the right-hand side. What does that appear to be, on
6 the right-hand side, at the top?

7 A. I wouldn't call that a business card.

8 Q. What would you call it?

9 A. A label.

10 Q. What information does this, in your view,
11 label, have on it?

12 A. New Life Landscapes, Inc., 8815, East Spurr
13 Lane.

14 Q. What kind of service would you expect to
15 discuss if you were to contact 8815 East Spurr Lane?

16 MS. KIRK: Objection. Form.

17 THE WITNESS: Landscaping.

18 Q. (Continued by MR. ADAMS) And on the left-hand
19 side, there are a couple of photographs. In the top
20 photograph, do you see a couple of trucks depicted?

21 A. Yes.

22 Q. And a large trailer?

23 A. Uh-huh.

24 Q. To your knowledge, do landscape companies have
25 trucks and trailers to haul their supplies and tools and

1 equipment?

2 MS. KIRK: Objection. Foundation and
3 form.

4 THE WITNESS: Yes, but my employees take
11:17:25 5 their trucks home, and they don't conduct business out of
6 their house. I wouldn't consider that their office,
7 because my truck is at their house.

8 Q. (Continued by MR. ADAMS) Okay. But you
9 testified earlier that conducting a business activity
11:17:36 10 does not require that money actually exchange hands --

11 A. That is correct.

12 Q. -- on the property on Coyote Springs Ranch.

13 A. I don't think a truck sitting someplace means
14 that there's a business there either.

11:17:45 15 MS. KIRK: Make sure you give him some
16 time to finish his question.

17 THE WITNESS: Okay. I'm sorry.

18 MS. KIRK: The court reporter can't take
19 it down.

11:17:53 20 Q. (Continued by MR. ADAMS) I hand you what has
21 been marked as Exhibit No. 11. What do you see on the
22 right-hand side?

23 A. Coyote Curt's Auto Repair.

24 Q. What kind of a document is the item on the
11:18:06 25 right-hand side, in your view?

1 A. A business card.

2 Q. Okay. What does the business card appear to
3 be advertising?

4 MS. KIRK: Objection. Form.

:14 5 THE WITNESS: Auto repair.

6 Q. (Continued by MR. ADAMS) Okay. And based
7 upon the business card, who is advertising that they
8 perform auto repair services?

9 A. The gentleman's name?

:31 10 Q. Yes.

11 A. Curtis, what is it, Kincheloe? Kincheloe.

12 Q. Spelled K-I-N-C-H-E-L-O-E?

13 A. K-I-N-C-H-E-L-O-E, correct.

14 Q. And based upon the business card, what is the
3:49 15 address for Coyote Curt's Auto Repair?

16 A. 8950 East Mummy View Drive.

17 Q. On the left-hand side there are a couple of
18 photographs. Do you see where I'm making reference?

19 A. Yes, sir.

9:01 20 Q. The top photograph appears to have a couple of
21 large garage doors on top of -- that are part of a large
22 garage, correct?

23 A. Correct.

24 Q. Would you agree that a large garage is used by
9:12 25 an auto repair type of place?

1 A. Correct.

2 MS. KIRK: Objection.

3 Q. (Continued by MR. ADAMS) Would you agree that
4 Exhibit No. 11 appears to depict a business that's being
11:19:21 5 conducted at 8950 East Mummy View Drive?

6 MS. KIRK: Objection.

7 THE WITNESS: It could be. I haven't been
8 out there, so I cannot say for sure.

9 Q. (Continued by MR. ADAMS) Okay. Would you
11:19:30 10 consider fixing or repairing cars in exchange for money
11 to be a business activity?

12 A. Could be.

13 Q. Tell me the circumstances under which you
14 would determine that it could be.

11:19:49 15 A. As I have stated before, I don't know if
16 that's all he does. I don't -- I have not been out
17 there. I cannot state his business for sure.

18 Q. Of the items I've provided you so far today,
19 have you seen any of these before?

11:20:13 20 A. These pictures?

21 Q. Yes.

22 A. I think I've seen some of them, but, you know,
23 because I know at the very beginning we were given
24 pictures.

11:20:22 25 Q. Okay. Have you attempted to contact any of

1 the parties identified on any of the business cards --

2 A. No, sir.

3 Q. -- depicted in these exhibits?

4 Okay. I've handed you what has been marked as
11:20:29 5 Exhibit No. 14 and I'd just like you to tell me what you
6 see in the picture on the left, top -- top left.

7 A. I don't know what that is, if it's a house or
8 a garage or -- I don't know what that is.

9 Q. Could it be a greenhouse?

11:20:50 10 A. Well, is this transparent here, this part? Or
11 is it metal?

12 Q. I'm just asking you if it could be.

13 A. I don't know if it -- I think a greenhouse,
14 the sun has to come into it. And I don't know if the sun
11:21:06 15 can come into that or not.

16 Q. Would you agree that the photograph shown in
17 Exhibit No. 14 appears to depict rows of bushes and trees
18 being grown?

19 A. Yes.

11:21:13 20 Q. If whoever owned this property was taking
21 those bushes and trees to some location for sale, would
22 that be a business or commercial activity?

23 A. It could be, yes.

24 Q. Okay. Do you know Christin Bowra, spelled
11:21:36 25 B-O-W-R-A?

1 equipment?

2 MS. KIRK: Objection. Foundation and
3 form.

4 THE WITNESS: Yes, but my employees take
11:17:25 5 their trucks home, and they don't conduct business out of
6 their house. I wouldn't consider that their office,
7 because my truck is at their house.

8 Q. (Continued by MR. ADAMS) Okay. But you
9 testified earlier that conducting a business activity
11:17:36 10 does not require that money actually exchange hands --

11 A. That is correct.

12 Q. -- on the property on Coyote Springs Ranch.

13 A. I don't think a truck sitting someplace means
14 that there's a business there either.

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16 time to finish his question.

17 THE WITNESS: Okay. I'm sorry.

18 MS. KIRK: The court reporter can't take
19 it down.

11:17:53 20 Q. (Continued by MR. ADAMS) I hand you what has
21 been marked as Exhibit No. 11. What do you see on the
22 right-hand side?

23 A. Coyote Curt's Auto Repair.

24 Q. What kind of a document is the item on the
11:18:06 25 right-hand side, in your view?

1 A. Correct.

2 MS. KIRK: Objection.

3 Q. (Continued by MR. ADAMS) Would you agree that
4 Exhibit No. 11 appears to depict a business that's being
11:19:21 5 conducted at 8950 East Mummy View Drive?

6 MS. KIRK: Objection.

7 THE WITNESS: It could be. I haven't been
8 out there, so I cannot say for sure.

9 Q. (Continued by MR. ADAMS) Okay. Would you
11:19:30 10 consider fixing or repairing cars in exchange for money
11 to be a business activity?

12 A. Could be.

13 Q. Tell me the circumstances under which you
14 would determine that it could be.

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16 that's all he does. I don't -- I have not been out
17 there. I cannot state his business for sure.

18 Q. Of the items I've provided you so far today,
19 have you seen any of these before?

11:20:13 20 A. These pictures?

21 Q. Yes.

22 A. I think I've seen some of them, but, you know,
23 because I know at the very beginning we were given
24 pictures.

11:20:22 25 Q. Okay. Have you attempted to contact any of

1 the parties identified on any of the business cards --

2 A. No, sir.

3 Q. -- depicted in these exhibits?

4 Okay. I've handed you what has been marked as
11:20:29 5 Exhibit No. 14 and I'd just like you to tell me what you
6 see in the picture on the left, top -- top left.

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8 a garage or -- I don't know what that is.

9 Q. Could it be a greenhouse?

11:20:50 10 A. Well, is this transparent here, this part? Or
11 is it metal?

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14 the sun has to come into it. And I don't know if the sun
11:21:06 15 can come into that or not.

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17 Exhibit No. 14 appears to depict rows of bushes and trees
18 being grown?

19 A. Yes.

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21 those bushes and trees to some location for sale, would
22 that be a business or commercial activity?

23 A. It could be, yes.

24 Q. Okay. Do you know Christin Bowra, spelled
11:21:36 25 B-O-W-R-A?

AFFIDAVIT OF ROBERT D. CONLIN

STATE OF ARIZONA)
) ss.
COUNTY OF Yavapai)

ROBERT D. CONLIN, upon his oath and affirmation, and after being first duly sworn, deposes and states as follows:

1. I am over the age of eighteen and otherwise competent to testify to the following based upon my personal knowledge.

2. As an original owner and grantor, I am responsible for the preparation and recording of the Declaration of Restrictions, pertaining to Coyote Springs Ranch, recorded June 13, 1974 (a true and correct copy attached hereto as Exhibit "A"). The covenants and restrictions were intended to benefit the landowners.

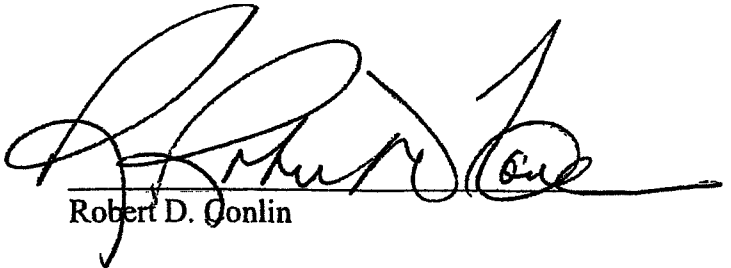
3. The recorded covenants and restrictions were intended to ensure that the Coyote Springs Ranch subdivision would be a residential community. The nine-acre lots were intended to ensure that the residential community would retain a rural setting.

4. To protect the rural, residential setting of the subdivision, a covenant was included strictly prohibiting trade, business, commercial or industrial enterprises for operating in the Coyote Springs Ranch subdivision.

5. The covenant against trade, business, commercial or industrial enterprises was not intended to prohibit against landowners or occupiers from maintaining a home-office in their residence, from parking or maintaining their business vehicles or equipment on their property, or from indicating to the public that they had a home office at their residence.

6. I have personally viewed the nursery operation engaged in by Catherine and Donald Cox on their property located in Coyote Springs Ranch. As an original grantor and creator of the recorded Declarations of Restrictions, June 13, 1974, it was my intention that the restrictions prohibit the very activity being conducted on the property by Catherine and Donald Cox. Furthermore, the express language of the restrictions provide such.

FURTHER AFFIANT SAYETH NOT.


Robert D. Conlin

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SUBSCRIBED AND SWORN TO before me this 4th day of November, 2004, by Robert D. Conlin.

Cheryl Keating
Notary Public

My Commission Expires:

10/19/08



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